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**IN RE ALLERGAN BIOCELL
TEXTURED BREAST IMPLANT
PRODUCTS LIABILITY LITIGATION**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

MCL CASE NO. 634

MASTER DOCKET NO. BER-L-5064-20

**CERTIFICATION OF
MATTHEW R. MENDELSON**

MATTHEW R. MENDELSON, of full age, certifies as follows:

1. I am a partner at Mazie Slater Katz & Freeman, LLC (“Mazie Slater”) in Roseland, New Jersey. I respectfully submit this certification in support of Plaintiffs’ Motion for Reconsideration and/or Appeal of Special Master Case Management Order No. 32. This certification is based on my personal knowledge of the facts set forth herein.

2. A true and accurate copy of the September 14, 2021 Case Management Conference transcript is attached as **Exhibit “A.”**

3. A true and accurate copy of relevant portions of the deposition transcript of Roger Huff is attached as **Exhibit “B.”**

4. A true and accurate copy of relevant portions of the deposition transcript of Victor Huynh is attached as **Exhibit “C.”**

I declare under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 18, 2024



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EXHIBIT A

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IN RE: ALLERGAN BIOCELL TEXTURED :
BREAST IMPLANT PRODUCTS LIABILITY : MCL No. 634
LITIGATION :

- - -
CASE MANAGEMENT CONFERENCE
- - -

DATE: SEPTEMBER 14, 2021
BEFORE: THE HONORABLE JOSEPH A. DICKSON, USMJ
THE HONORABLE RACHELLE L. HARZ, JSC

(ALL PARTICIPANTS APPEARING REMOTELY)

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Jenny Chung, Legal Assistant to Judge Dickson

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11 (Participating via telephone #8080, #4251)

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1 (Proceedings commenced at 11:09 a.m.)

2 JUDGE HARZ: Okay. Judge Dickson, do
3 you want to start off?

4 JUDGE DICKSON: That's fine with me.
5 Let's go there. So who goes first, Mr. Kelly or
6 Mr. Cohen?

7 MR. KELLY: I'm happy to tee up the
8 issue.

9 Essentially, there are a large number
10 of ESI data sources at issue in this case. We have
11 narrowed the upcoming ESI 30(b)(6) deposition to
12 five of those at this point. One is TrackWise. We
13 got a user manual for TrackWise at the end of last
14 month. We have repeatedly requested user manuals
15 and other secondary materials as they relate to
16 relevant repositories of ESI for years now,
17 including the most recent conference and most recent
18 letter. We haven't received those for any of the
19 other four sources. It is our understanding that
20 defendants were going to provide those.

21 That's essentially where we are.

22 JUDGE DICKSON: Mr. Cohen.

23 Mr. Kelly, if I can interrupt you.
24 I'm sorry. I apologize.

25 Mr. Cohen, based on what I read in

1 the letter and what I think Judge Harz read, too,
2 and I know that she has some thoughts about this, it
3 looks like those manuals and user programs and all
4 that, that you have talked about turning them over,
5 but you just haven't done it yet. And there's an
6 indication that maybe some don't exist, which is --
7 I would like you to explain that. If they don't
8 exist, why could -- how do your people work with
9 that software without any kind of user manual?

10 MR. COHEN: Right. So we have asked
11 about user manuals and other materials for all five
12 of those data sources. The one that we have a user
13 manual for is the CPR database, essentially the
14 complaints database, and we've turned that over.

15 The plaintiffs have asked us for user
16 manuals and database schema or folder structures for
17 the Skype box, voicemail, and SharePoint, as you
18 know, and we don't have those. We've checked with a
19 couple of people. First of all, the technical
20 people didn't even understand what they were talking
21 about in terms of database schema and folder
22 structures. That wouldn't apply to a couple of
23 these document types.

24 But users, like there was about like
25 28 databases all together, and most of them don't

1 have user manuals. Users that use them are trained
2 on how to use them. And so it's not that we're
3 holding back on user materials that we have for
4 those databases. The users know how to use them,
5 and certainly at the 30(b)(6) deposition, the
6 plaintiffs can ask any questions they have about how
7 to use those different systems.

8 JUDGE DICKSON: All right. So why
9 don't you have your deponents, prior to the
10 deposition, sign some kind of declaration about
11 specifically what does not exist.

12 MR. COHEN: Sure, we can do that.

13 MR. KELLY: That would be enough for
14 plaintiffs. And at this point, we would like
15 whatever secondary information that could help make
16 that deposition more efficient. We have not yet
17 heard before just now that these documents didn't
18 exist. So, if they don't, again, something in
19 writing with a signature on it would be helpful in
20 advance of the deposition enough that we can cure
21 any issues before the deposition.

22 MS. KWUON: I would just add a
23 footnote to that piece. In the inquiry about
24 whether those documents exist, people have looked in
25 the appropriate places for them. There is always

1 the possibility, so it's hard to say, you know, when
2 you talk about [indiscernible word] wide, there's
3 always the possibility that somebody has a copy of
4 something, you know, squirreled away in an email
5 attachment or on a drive somewhere. But based on
6 the reasonable inquiry and research we have done,
7 those documents don't exist.

8 And as to the schema, I think that
9 Max and I talked about this a little bit, it's a
10 document that the company doesn't have. We would
11 have to go to Sparta, which is the third party that
12 actually provides the generic tool, and then it's
13 customized as it relates to the way the company uses
14 it. So it's something, again, that the company
15 doesn't have.

16 And I think to answer a little bit
17 some of the questions, as to some -- some of the
18 databases are also retired, so it's another reason
19 why something like what might be called a user's
20 manual doesn't appear to exist.

21 JUDGE DICKSON: Well, the whole point
22 is that the plaintiffs are entitled to know how this
23 data is used, stored, manipulated, changed,
24 whatever, archived, pulled out of archives. I don't
25 mean to tell you that you -- I know you know that.

1 But rather than having a multiday
2 deposition, let's make sure within -- it's scheduled
3 for the 28th, correct?

4 MR. KELLY: Correct.

5 JUDGE DICKSON: So I would say that
6 everything you need to get, including a declaration
7 of what you cannot find or what, apparently, does
8 not exist based on a reasonable search and maybe
9 give a little bit of that to Mr. Kelly so he doesn't
10 have to spend an hour asking how have you searched,
11 because those are very time-consuming and annoying
12 questions in a deposition.

13 I agree, it's discovery on discovery,
14 and I get it, but this has got to move. This has
15 got to move, and it's time for them to have all of
16 that information, because I really want to get to
17 the substantive discovery in this case.

18 JUDGE HARZ: Can I ask a silly
19 question? At this deposition on September 28th, the
20 individual who is being deposed, is that individual
21 going to have multiple screens in front of him, so
22 that if he is asked a question about box or
23 voicemail, he would be able to show during the
24 deposition what to access or where that information
25 would be, or are you doing this in a vacuum without

1 any computer or computer access?

2 MR. COHEN: So there are two
3 different deponents. One deponent is speaking to
4 SharePoint, Skype box, and voicemail, and the other
5 is speaking to CPR TrackWise.

6 The thing to remember about these
7 systems is this really is very collateral to any of
8 the merits about this case. These systems are not
9 set up just for complaints, other than the CPR
10 TrackWise system. So to the extent that -- and
11 we've questioned whether it's appropriate to have
12 any discovery at this stage since it is, as cases
13 point out, it's a discovery about discovery. There
14 have been no issues yet. These are just among the
15 28 databases that we said we were going to search
16 for responsive information.

17 So our view has been that this is all
18 quite premature discovery. However, we have put up
19 these witnesses and the thought is that they will
20 provide whatever background information they are
21 asked about. If that leads to questions, it could
22 yield some sources of data that we're not searching
23 for, we can start to reach out. But we are not in a
24 stage where anybody has said, Oh, we're having
25 trouble pulling out data or searching for data.

1 None of that has happened. There's no reason for --

2 JUDGE HARZ: Can I just ask you a
3 question? You said that Skype box, voicemail, and
4 SharePoint weren't set up for complaints. TrackWise
5 was?

6 MR. COHEN: That is the basic
7 complaint system.

8 JUDGE HARZ: Okay. So then the
9 question is going to be, in Skype box, voicemail,
10 and SharePoint, how does one access where complaints
11 would be stored? Okay. So my question is, the
12 person who is answering this is responding to, at
13 this deposition, to that specific question about
14 where are complaints stored in these four systems.

15 Is that person going to have access,
16 right then and there, with screens to show, you
17 know, at the deposition, how it is accessed?
18 Because how do you describe that? You need to show
19 that.

20 MR. COHEN: Right. So we have not
21 gotten to the point yet where we know even that
22 there are complaints stored in any of these systems.
23 So what we have been focusing on is the -- first,
24 the data sources most likely to have relevant
25 discoverable information. So our initial focus has

1 been on CPR TrackWise system and restoring the
2 email, and we have identified 38 custodians that
3 have email, and we've gotten from the plaintiff
4 their preferences as to what order we treat those
5 custodians in, and we're he basically following
6 their request.

7 There are going to be hundreds of
8 thousands, probably millions of documents in that
9 email which are responsive. That's where we are
10 starting to focus.

11 JUDGE HARZ: Okay. Okay.

12 MR. COHEN: We looked at these other
13 database sources as things that we are going to look
14 into as to whether there's other discoverable
15 information. That's a process and that's going to
16 go on. That's one of the reasons why we're saying
17 this discovery about discovery is premature. We're
18 not at a point where we found, Oh, there's a lot of
19 stuff in Skype that's relevant to the case.

20 JUDGE HARZ: When was TrackWise put
21 into effect? I just forget right now.

22 MR. COHEN: Janet, if you can help me
23 out there. I don't remember the exact date. I
24 think it's in our disclosure.

25 JUDGE HARZ: Okay. Whenever that is.

1 So that's when complaints are all placed in
2 TrackWise, one nice, neat place. So the complaints
3 prior to that, you're saying, perhaps are not in
4 these four, you know, Skype box, voicemail,
5 SharePoint, but, rather, it would be in some
6 custodian's email somewhere. Is that what you're
7 saying?

8 MR. COHEN: Yes. We have not gotten
9 to the point where we have fully investigated all 28
10 databases to know where everything is. The
11 information that we have gained about the databases
12 we have made available to the plaintiffs in the five
13 different disclosures that we've done in writing so
14 far. Those investigations of the data sources
15 outside of email are continuing.

16 And so we -- discovery is going to go
17 on for a while and we're going to be continuing to
18 look for anything that is responsive for this case,
19 and we will be continuing to meet and confer with
20 plaintiffs and informing them of what we find. But
21 I can't -- I don't know the answer right now,
22 sitting here, unless Janet or Melissa does, as to
23 whether we know of existing complaints prior to the
24 CPR TrackWise system where -- whether those are in
25 any one particular system outside of email.

1 Janet, do you know anything or have
2 any idea on that?

3 MS. KWUON: Sure. The TrackWise is
4 managing all known complaints at this time, and for
5 any predecessor systems, they are transferred or
6 migrated into TrackWise.

7 JUDGE DICKSON: That was my question.

8 MS. KWUON: Yeah. So it's the body
9 of where everything sits now. There are older
10 versions of things in the past. So the witness is
11 going to talk about TrackWise, which is what he is
12 most familiar with. He has been living in that
13 space for about a decade. And then the predecessor
14 systems, as well, to the extent that there's
15 information and he knows information about them.

16 MR. KELLY: Your Honor, just to --
17 I'm sorry. Just to clarify the potentially
18 discoverable information within the Skype, voicemail
19 box, SharePoint system, isn't -- it isn't limited to
20 complaints specifically, and it is the plaintiffs'
21 understanding that all the complaints have been
22 migrated into TrackWise from the predecessor
23 systems.

24 JUDGE HARZ: Thank you.

25 JUDGE DICKSON: So then is there any

1 decision right now that Judge Harz and I are called
2 upon to make? It sounds like you're going to get a
3 declaration or somethings under oath, signed,
4 regarding what you cannot find or what does not
5 exist, whatever the most appropriate way to say that
6 is, the most truthful way to say that. I know you
7 will do that. And then you will have it in time so
8 the deposition can go forward of the two deponents
9 on September 28th. Correct?

10 MR. COHEN: Yes. And just to be
11 clear about that, we don't have user manuals for
12 the -- we haven't found user manuals for the
13 systems, other than CPR TrackWise. Some of them,
14 those other questions are not applicable, like
15 database schema, folder structures. One or two
16 systems do have folder structures, but there are
17 reasons that they would not be helpful in locating
18 the documents. Would not be -- you know, nothing
19 that we could find and turn over in any easy manner.

20 That can all be explained in --

21 JUDGE HARZ: Would you be able to put
22 in writing to Mr. Kelly, he's asking for something
23 in writing, signed, that there are no XY&Z
24 pertaining to Skype box, voicemail, and SharePoint?
25 He wants that in writing and signed. When could you

1 get that to him?

2 MR. COHEN: Subject to what Janet
3 said, based on our reasonable investigation, talking
4 with people who know the most about these systems,
5 what they know, find out, checking. So, yes, we
6 would be able to do that. And that deposition is
7 scheduled for the 28th, and I would think that
8 certainly within a few days prior to the deposition
9 we would be able to get that to the plaintiffs.

10 JUDGE HARZ: Why don't we say by the
11 22nd, September 22nd.

12 MR. COHEN: Yes.

13 MR. KELLY: Thank you, Your Honor.

14 JUDGE DICKSON: All right. So then
15 can we move to the organizational information?

16 MR. COHEN: Excuse me. I want to
17 thank you. I'm the one with the conflict, so if I
18 might have your permission to excuse myself for the
19 rest of the conference. And thank you for
20 accommodating my schedule today.

21 JUDGE DICKSON: I note that it's
22 11:22. If you could stay until 11:30 -- no, I'm
23 kidding.

24 JUDGE HARZ: Good luck, Mr. Cohen,
25 wherever you are going.

1 MR. COHEN: Thank you very much. I
2 appreciate. Take care.

3 MR. KELLY: Your Honor, if we wanted
4 to frontload the ESI conflicts, there is the
5 exemplar issues intertwined with that, although I'm
6 happy to defer that until later in the call.

7 JUDGE HARZ: The exemplar issue is on
8 page 6 of the September 9, 2021 letter. Basically,
9 I think what we're dealing with now is plaintiffs
10 are saying they have three -- okay. Allergan is
11 producing exemplar adverse event reports. There are
12 three issues that plaintiffs wish to follow up on,
13 and defendants have not responded to those inquiries
14 to date. I think that's --

15 MR. KELLY: Yes. So the request is
16 for additional, you know, either fulsome answers to
17 those questions or additional exemplars that sort of
18 contain or point to or illuminate the answers to
19 those questions.

20 JUDGE DICKSON: Was that Mr. Cohen
21 that was just let go who should answer that, or can
22 Ms. Kwuon answer that?

23 MS. KWUON: I think I can answer some
24 of these questions.

25 So with regard to attachments to the

1 three exemplars that we provided, we are confirming
2 it was when we made the request that it was the full
3 PDF along with all the attachments. Somebody is
4 going back to just double check and make sure that
5 that was what was produced. I believe that's the
6 case. It looks like it. We don't seem to be
7 missing anything, but we're confirming that.

8 As to whether or not there are
9 additional product complaint reports that can be
10 provided over the entire sequence of time, as we've
11 explained and I confirmed earlier, everything is
12 being managed through the current system and we
13 already kind of have moved to a discussion and
14 agreement with regard to extraction of fields of
15 information from that to include all the complaints
16 that we believe are relevant, which are the
17 confirmed and suspected ALCL-related cases.

18 And so the additional requests are --
19 you know, these additional add-ons that require us
20 to kind of stop and respond to things that are
21 taking away from what we're trying to do, to get the
22 full body of data out to plaintiffs as soon as
23 possibility. So the sort of the lingering ask of,
24 you know, can you give us one that's representative
25 of XY and Z, or, you know -- this year, at some

1 point, I think there was even a discussion about one
2 per year, or something like that.

3 It's difficult for us to keep kind of
4 down that path as we're trying to prioritize getting
5 the electronic extraction, which I think will be all
6 of the answers, I hope, most of the answers to all
7 the questions that are at issue.

8 MR. KELLY: Your Honor, so if I can
9 respond to that.

10 JUDGE DICKSON: Go ahead.

11 MR. KELLY: The first issue is that
12 it sounds like we still don't have confirmation that
13 the exemplars that were produced are the full files.
14 We still don't have confirmation on that.

15 Is that correct, Janet?

16 MS. KWUON: No. I would say that
17 when we went back and looked, it appears to be.
18 I've asked someone to check again. I don't know
19 whether counsel is thinking something is missing.
20 But, you know, when I come back and write to you and
21 say it absolutely is triple checked, that's what I
22 just want to make sure we're doing. We checked. It
23 appears to be what it's supposed to be. But I want
24 to get a triple check before I send that back to you
25 in writing.

1 JUDGE HARZ: Is this in TrackWise?

2 MR. KELLY: Yes.

3 JUDGE HARZ: The exemplar adverse
4 event reports?

5 MS. KWUON: Yes.

6 JUDGE HARZ: Is this something at the
7 deposition that can be delved into at that time?
8 Will that individual be able to say, Okay, here is
9 this adverse event report, it's in TrackWise, and
10 all the documents having to do with the adverse
11 event report are here or not here, or elsewhere?
12 Will this person know that?

13 MS. KWUON: He's coming from the IT
14 side of the program, so similar to what we might
15 think of if we call an IT person to help with
16 emails. He can answer questions regarding the
17 technology side of it. The crossover into actual
18 content, there may be some parts he can answer from
19 an IT perspective, but it's different also from a
20 business user who is, you know, actually using the
21 communications.

22 JUDGE HARZ: Who would know that?

23 MS. KWUON: We're in the middle. So
24 what we're doing is we're actually talking to the
25 business people who track -- who work on the

1 documents, attach the attachments, kind of click on
2 everything that looks like there should be an
3 attachment to confirm that there is an attachment
4 and then to compare that to what was delivered to us
5 as the attachment.

6 JUDGE HARZ: I'm just wondering is
7 there someone else who should be deposed who can say
8 whether or not the exemplar adverse event report is
9 everything, or where other information about that
10 adverse event report is in your system. That's what
11 I'm trying to figure out.

12 MS. KWUON: So if we're able to
13 confirm -- one is my confirmation is that it is
14 complete. I'm asking someone to triple check it.
15 After we triple check it, I believe that that should
16 be, you know, as far as we can tell, you know, no
17 indication that there's something missing.

18 I haven't heard from counsel that
19 they see anything to suggest that something is
20 missing, or that there's a reference to a document
21 that actually wasn't provided as an attachment. So
22 what I would like to do --

23 JUDGE DICKSON: Let's -- let's hear
24 from Mr. Kelly on -- I want to hear from Mr. Kelly
25 on that.

1 MS. KWUON: Sure.

2 MR. KELLY: So to be clear, I think
3 that Ms. Kwuon is responding to our first bullet
4 point there, which is confirming these are the
5 complete files. Our reading of what you sent over
6 had suggested that maybe there was an external
7 investigation report or an explanation of why an
8 investigation was not conducted, because we did not
9 see a writing like that or recognized something like
10 that within the exemplar that you provided, and it's
11 my understanding those are required.

12 So that was the confusion in terms of
13 that specific first bullet, the completeness issue.
14 And it might just be an disagreement about -- I
15 mean, I wouldn't be shocked if plaintiffs and
16 defendants disagree on what an adequate
17 investigation or explanation is.

18 The second bullet relates to the
19 source files issue. I know that early on, you know,
20 defendants had claimed that because there were these
21 linked source files that impacted the formats in
22 which TrackWise data could be produced. Did the
23 exemplars that you guys produced, did those have
24 linked source files? Like, are these exemplars that
25 would be impacted by that issue?

1 JUDGE DICKSON: This is the question
2 I had, Mr. Kelly. You asked that question. Did you
3 see something in the exemplars that you examined
4 that indicated that maybe there were links, or the
5 links were taken out?

6 MR. KELLY: There were attachments at
7 the end of the exemplars. But there was -- but I
8 guess within exemplars. The form would end, and
9 there would be a cover sheet and a new document
10 within the same PDF. The question is, are those the
11 source files that defendants are talking about, or
12 have we not yet encountered an example on an
13 exemplar that has that problem with it?

14 JUDGE DICKSON: That's a more
15 specific question. Ms. Kwon, may I please, and I'm
16 sorry to overly direct, but answer that question, if
17 you can, Ms. Kwon.

18 MS. KWON: It is my understanding
19 that the attachments are the source files that were
20 completely pulled. So there's the product complaint
21 report and then there are all the associated
22 attachments in the PDFs and all of those were
23 completely pulled and provided to counsel.

24 JUDGE DICKSON: Okay. So the --

25 MR. KELLY: The first and second

1 bullets then. That is very helpful. The issue then
2 is the third bullet, which I think is actually
3 something that if we handle it at the deposition, it
4 would be too late to handle, or it will require more
5 questions afterwards.

6 Essentially, the issue is that, as we
7 discussed, complaints that were entered into past
8 complaint management systems have been migrated into
9 TrackWise.

10 JUDGE DICKSON: Right.

11 MR. KELLY: Those predecessor systems
12 were not identical to TrackWise, or they would be
13 called TrackWise. So the question is: To what
14 extent, if any, do the data fields, the inputs and
15 outputs, or even just the operating procedures for
16 how you -- you know, what level of detail you put
17 into which field, when, whether it's a dropdown
18 things like that, these data fields presumably
19 changed over time at least to some extent.

20 Right now, all of the exemplars we
21 have are from the last six months. They were
22 entered into the current version of TrackWise. So
23 the question is -- we know now what it looks like if
24 you try to extract a complaint that was initially
25 entered into the current version of TrackWise. What

1 we don't know is what it looks like if you try to
2 pull out data that was entered into EasyTrack
3 [spelling unconfirmed] or into Manman, later
4 migrated over into TrackWise, like do those reports
5 come out in exactly the same format, with the same
6 fields, or are some of the -- we're just -- I'm
7 familiar with database migration like this ending
8 with fields getting switched, moved, or eliminated,
9 or added. And that's information we need, because
10 it's not the case that the only relevant complaints
11 in this action were added into TrackWise. They were
12 relevant complaints in predecessor systems that have
13 migrated into TrackWise.

14 JUDGE DICKSON: I understand that.

15 Ms. Kwuon, can you answer that
16 question?

17 MS. KWUON: Those are the questions
18 that the witness is going to be able answer at
19 deposition. I think that counsel sort of set the
20 schedule about when they wanted the depositions
21 taken. These are being taken sort of first at bat
22 in the litigation. There are probably, you know,
23 more things, for example, that we haven't produced.
24 That database with the actual fields yet. That is
25 in progress. That is going to happen after the

1 deposition of the witness later this month.

2 And so for us, with regard to, you
3 know, what we are providing to the other side, it
4 makes sense to us that the production has been as
5 complete as it can be to date right now. I know
6 Mr. Cohen is going to provide additional information
7 about some of the SOPs, and the witness is going to
8 be able to answer these questions at his deposition.

9 JUDGE DICKSON: My only concern --

10 MR. KELLY: Oh, I'm sorry, Your
11 Honor.

12 JUDGE DICKSON: Go ahead, go ahead.
13 And then I'll tell you what my only concern is. Go
14 ahead.

15 MR. KELLY: My concern is just that
16 this is sort of an inherently written visual thing,
17 and it seems unlikely to me that if we asked any
18 deponent, even if they're extremely familiar with a
19 predecessor ESI storage system platform, that they
20 would be able to rattle off every single data field
21 off the top of their head and identify which have
22 changed between the system they're remembering and
23 TrackWise.

24 I think that a much easier way to
25 frame that conversation would be with a document

1 that shows what the report looks like, and say, did
2 this field exist, does that field exist, how are
3 they different across the two systems.

4 JUDGE DICKSON: Well, you have that
5 first document. What you don't have is an exemplar
6 from pre-TrackWise --

7 MR. KELLY: Exactly.

8 JUDGE DICKSON: -- or an exemplar of
9 TrackWise that has data that had to be migrated
10 over.

11 MR. KELLY: Exactly.

12 JUDGE DICKSON: That's what you need.
13 Well, that should be easy enough, I would think.
14 That's number one. I also agree with Judge Harz, it
15 seems to me it's very important to have someone,
16 whoever the deponent is, to have a computer in front
17 of them if they need to show you at the deposition
18 what the difference in the fields are. Because I
19 get your question, I understand, and I think it's
20 correct. Now, I don't think this should be very
21 hard.

22 Ms. Kwuon, can't we get them an
23 exemplar that has migrated information in it?

24 MS. KWUON: So let me go back and see
25 what we can pull with regard to a pre-TrackWise

1 product and complaint, and I will report back to the
2 Court. So let me look into that.

3 JUDGE DICKSON: I don't know if you
4 have to report back to us. If you can just put that
5 into -- whatever it is. I mean, it's a fair
6 question because -- now I'll express what my concern
7 is.

8 My concern is that we go through this
9 exercise, and then you produce thousands if not
10 millions of documents, and then as they read them
11 and they start to get ready to depose the custodians
12 or the -- or not even the custodians, but the fact
13 witnesses from Allergan, it turns out that there was
14 information that no one was able to track down
15 because we didn't fix this first.

16 So I'm saying this for a reason,
17 because I am sympathetic to the discovery on
18 discovery issue, but this seems to be something we
19 need to nail down before we start massive amounts of
20 substantive discovery, so that we don't have to stop
21 that and go back and do some things again.

22 And I think with these simple
23 questions -- to me they are simple. The answers may
24 not be simple, but I think the questions are
25 simple -- we may be able to avoid that stop and go.

1 I mean, old war stories sometimes help. This is a
2 very short one.

3 Patent case. We were at the end, and
4 then they started to fight. And I found out -- it
5 was a case that I took over, so it's not my problem,
6 but I found out that they never sat down and defined
7 the search terms and custodians before they produced
8 massive amounts of information.

9 If we can just -- this is akin to
10 that in my view. If we can make sure we know what
11 we're producing and how we can review it, then we
12 won't have a problem later.

13 MR. KELLY: I know in the joint
14 update letter, defendants had complained there were
15 not MDR numbers provided. We have since sent over,
16 I think it was late last week, a list of MDR
17 exemplars that we could use if there was an issue
18 with selection there. So we've provided those.

19 JUDGE DICKSON: Okay.

20 Judge Harz, did you have anything
21 else on that?

22 JUDGE HARZ: I see what you're
23 saying. Plaintiffs have not yet provided the
24 additional medical device reporting information they
25 indicated they would, so that is all done.

1 MR. KELLY: Yes, by letter.

2 JUDGE HARZ: I have a question mark.

3 So I can delete that.

4 Okay. So just in terms of an order
5 that comes out of today's conference, with regard to
6 turning over an exemplar of an adverse event report
7 pre-TrackWise, when can we do that?

8 MS. KWUON: How about the same
9 date of the -- was it the 22nd that we set?

10 JUDGE HARZ: Okay. Right. That is
11 the recertification. Okay. September 22nd, it's
12 going to be a pre-TrackWise -- how should I phrase
13 that? How should we phrase it?

14 MR. KELLY: Your Honor, there were
15 actually multiple predecessor systems.

16 JUDGE HARZ: I know.

17 MR. KELLY: So I was going to say
18 EasyTrack and Manman.

19 JUDGE HARZ: Okay. I need the
20 wording. I need the wording, Mr. Kelly. So by
21 September 22nd...

22 MR. KELLY: Exemplar complaint files
23 from the Manman and Easytrak systems, and
24 corresponding to the MDR numbers plaintiffs
25 provided.

1 JUDGE HARZ: And EasyTrack System --
2 Manman is M-A-N-M-A-N?

3 MR. KELLY: Yes.

4 JUDGE HARZ: And EasyTrack System
5 corresponding...

6 MR. KELLY: And corresponding to the
7 MDR numbers plaintiffs provided.

8 MS. KWUON: For clarification on
9 that, Your Honor, I think we can pull, you know, one
10 exemplar from each of the time periods, and use that
11 MDR number, select one from the provided the MDR
12 number.

13 JUDGE HARZ: Is that agreeable to
14 you, Mr. Kelly?

15 MR. KELLY: In full disclosure, I
16 wasn't the person who selected those MDR numbers. I
17 know those were the MDR numbers you were interested
18 in. I don't know what the additional burden is of
19 producing those other exemplars. But we would want
20 all of those, is my understanding from people who
21 prepared those numbers. But I mean, if that is not
22 feasible or --

23 JUDGE DICKSON: How many MDR numbers
24 were provided?

25 MR. KELLY: I think it was ten, but

1 let me double check that.

2 MR. VESPERMANN: This is Wyatt
3 Vespermann with Panish. It was 13 total.

4 MR. KELLY: Thank you, Wyatt.

5 Wyatt is our MDR number selector.

6 MS. KWUON: To be able to do a
7 compare, it seems to me that one exemplar from each
8 of the systems enables counsel to compare. Again,
9 every additional thing is an additional thing. So I
10 think we can provide one exemplar for that MDR pool
11 from the various time periods.

12 JUDGE HARZ: But aren't you just
13 pressing a button to print out 13?

14 MS. KWUON: No. You know, just as we
15 -- I think when we started at the very beginning,
16 when we were going to make a production of product
17 complaint files and each of the attachments, there
18 isn't a single button. It requires, you know,
19 finding the particular MDR and then going and
20 connecting to all of the different attachments, and
21 then pulling each attachment and converting it into
22 a PDF so that it can be provided.

23 It's unfortunately not as easy as
24 just pushing ten buttons as opposed to just one.

25 JUDGE DICKSON: Well, let's do this.

1 Let's do three. Let's do three. And Plaintiff, you
2 identify the three you want her to do.

3 MR. VESPERMANN: Your Honor, if I
4 could just chime in. This is Wyatt again with
5 Panish Shea & Boyle.

6 It's not just the migration from the
7 old database. There's certain adverse events, and
8 the way that Allergan has handled them differs, for
9 example, from the exemplars they provided. So if a
10 device is returned to Allergan, they will do a
11 failure analysis, and so we want an exemplar that
12 shows what does the failure analysis complaint look
13 like, or if there was someone who was in one of
14 their clinical studies that developed ALCL, and
15 there's a couple examples of those, we want to see
16 how that complaint handling works.

17 So it's not just the migration issue;
18 it does go a little bit further than that in that
19 not every complaint is the same. And so that's why
20 there were 13. It's not just migration from the old
21 system, but different, unique factual scenarios.

22 JUDGE HARZ: Okay. I get it.

23 JUDGE DICKSON: It sounds more like a
24 substantive question than ECI, electronic data
25 question.

1 MS. GEIST: Your Honor, can I just
2 chime in on that, too, because I have been sitting
3 quietly.

4 From our perspective, and we will
5 comply with what Your Honor orders today, from our
6 perspective, it is more of a substantive issue
7 because I think plaintiffs would have in front of
8 them the different iterations of the adverse event
9 reports, right, that come from TrackWise, and before
10 that Easytrak, and before that Manman. And
11 presumably, at a substantive deposition of a safety
12 person, somebody who can speak to how the company
13 records complaints as they come in, and that person
14 would answer questions about how things may have
15 changed over the various time periods.

16 So -- and again, all of the ALCL
17 complaints and suspected ALCL complaints are going
18 to be provided, all of them, for the entire time
19 period we have been discussing. So plaintiffs will
20 have all of that and then they can put the documents
21 in front of them and say, okay, clearly here there's
22 a change in how the company was reporting complaint
23 information as it comes in, if that is the case.

24 So I understand. You know, again, we
25 will comply with whatever Your Honor orders, but to

1 me this goes more to substance, and I assume
2 plaintiffs will have some questions about why
3 certain information was reported at various times,
4 or not. I'm just making it up for purposes of this
5 argument.

6 But it's more of a substantive issue.
7 Was there a change over time in the recording of the
8 complaints; and if so, why, and to what extent. And
9 that goes to substance.

10 MR. VESPERMANN: I would push back on
11 that a little bit, Your Honor, because I think it is
12 a blurred line. There is some ESI component to this
13 because it's how are all these documents linked
14 together, how does the failure analysis link to a
15 CAPA?

16 And so this is how their data is
17 managed, is that one particular event coming in to
18 them from a complaint-handling perspective goes down
19 the line and to eventually, potentially, impacting
20 the manufacturing specs.

21 And so how those things link together
22 is a huge question mark right now. And it's not
23 necessarily substantive. It's kind of a hybrid.
24 There's an ESI component to how these different
25 systems link together.

1 JUDGE DICKSON: Okay. I think if we
2 answer all the questions you want, we're going to be
3 definitely jumping into the substantive pool.

4 JUDGE HARZ: Well, maybe allow for
5 six and let the plaintiffs pick the six they want,
6 instead of three, so you get a broader --

7 MR. VESPERMANN: I'll take it, I'll
8 take it.

9 JUDGE HARZ: I don't know how much is
10 in -- you know, Judge Dickson and I are at a
11 disadvantage. Ms. Kwun says it's a big deal, the
12 plaintiffs are saying it's not such a big deal.

13 Pick the six. You're saying that you
14 don't know what the different complaint files look
15 like, depending upon the type of complaint. Pick
16 the six you want, and then for the remaining eight
17 or seven, you know, if you show us a need, hey,
18 look, look at this, this is why we need the other
19 seven, we can address it. Okay?

20 MS. GEIST: The only thing, again,
21 Judge Harz, I just want to make sure it's clear, the
22 other seven, the ALCL-related adverse event
23 complaints, all of them are going to be produced.
24 It's just what do plaintiffs really need? What is
25 necessary to conduct this non-merit-based, you know,

1 non-substantive ESI-related deposition? And from
2 our perspective, if it really is, we want to ask
3 somebody what is the difference between the adverse
4 event reporting during the Manman system, Easytrak,
5 TrackWise, that should be able to be accomplished
6 with three.

7 JUDGE HARZ: Well, I think the ALCL
8 reporting from the plaintiffs' perspective is very,
9 very narrow because there's so many other words and
10 so many other medical conditions they would want to
11 see with regard to reporting, because by the time
12 they use the actual language of ALCL, they are
13 beyond the point of whether they are concerned about
14 suspicions having been raised.

15 So I don't think the ALCL reporting,
16 in and of itself, answers their questions.

17 MR. KELLY: It's our understanding
18 that defendant's ultimate production will include
19 confirmed ALCL cases, as well as cases with symptoms
20 consistent with ALCL, despite the lack of a
21 reference to ALCL.

22 MS. GEIST: Right. We had agreed --

23 MR. KELLY: And against -- I'm sorry.

24 MS. GEIST: -- ALCL and suspected
25 ALCL. Right.

1 But to Judge Harz's point, what I'm
2 suggesting is these are substantive questions that
3 will be presumably the subject of a deposition when
4 we get to the merits. We're just talking about an
5 ESI-related deposition, and I think we just need to
6 be clear it's limited to that.

7 And from what I've heard from
8 plaintiffs' counsel is they would like to see one
9 exemplar for each different system. They are all
10 now in one system, and they would want to see, okay,
11 what did it look like when the Manman system was in
12 place, and what did the adverse event reporting, you
13 know, taken in by the company look like when
14 Easytrak was in place.

15 So they have TrackWise, and they want
16 an example of a report from Easytrak and Manman.

17 JUDGE HARZ: Okay. So then,
18 Plaintiffs, why are you saying it's more than that,
19 that you need more than that? Why do you need more
20 than one from each?

21 MR. VESPERMANN: Your Honor, it kind
22 of goes back to what I said earlier that with
23 respect to these complaints, these different --
24 there's different obligations under the regs linked
25 together. Right. A complaint can lead to a CAPA

1 analysis. And so regardless whether we're in a
2 particular system, whether it's TrackWise or
3 Easytrak, how these obligations link together have
4 changed over time.

5 And so we just want to get a sense
6 of, for example, a failure analysis complaint. When
7 something comes in that the device is returned to
8 the company, how does that process look like and how
9 do the systems connect. And I think there's
10 definitely an ESI component to that because of how
11 this data is stored.

12 MS. GEIST: On that, Your Honor, I
13 don't want to overstep Ms. Kwuon, but on that, I
14 think, at a minimum, we need to meet and confer
15 about that because this issue about a device failure
16 and whether or not there was a device failure
17 analysis, our strong suspicion is there would be a
18 device failure analysis when there is a, let's just
19 say, a mechanical failure of the device. So there's
20 been a rupture, or some other mechanical failure of
21 the device.

22 The development of ALCL in a woman
23 who had the device implanted would be a complication
24 or an adverse event, but not necessarily a failure
25 of the device. So if you think about a medical

1 device, you know, if there's a rupture, that would
2 be considered a failure.

3 So I do think on that particular
4 topic, I think that, you know, we should meet and
5 confer on that because device failure, examples of
6 device failure analyses are probably outside the
7 scope of the ALCL litigation that we're talking
8 about. We're talking about ruptures and other
9 examples of true device mechanical failure.

10 JUDGE HARZ: Judge Dickson?

11 JUDGE DICKSON: Well, for the limited
12 purpose of this deposition, I still don't see any
13 reason not to do what we're talking about doing,
14 whether it's three or six. I understand what you're
15 saying, Ms. Geist, but if we go down that road,
16 we're going to wind up pushing the deposition out
17 and we're going to have briefing on whether or not
18 what the scope here is.

19 You will not be waiving your right to
20 argue scope at a later date if we can just get some
21 of these examples of exemplars done now so they can
22 at least understand what it looks like and how the
23 data was migrated from the earlier systems into
24 TrackWise, and whether or not a failure analysis of
25 a device will ultimately become something that they

1 get to look at through thousands of failure devices
2 we can talk about later.

3 JUDGE HARZ: Okay. So we'll go back
4 with the three, just for the purpose of having them
5 go forward with the deposition? Is that your
6 suggestion, Judge Dickson?

7 JUDGE DICKSON: No, I'm not. I don't
8 understand what was wrong with six. How much --

9 Ms. Kwuon or Ms. Geist, if they
10 identify six, I would say to the plaintiffs, if we
11 can give you six, they should be all different.
12 Let's not be redundant.

13 MR. VESPERMANN: Absolutely,
14 absolutely, Your Honor. They would be very unique
15 factual circumstances transcending the different
16 databases, and that's entirely the point.

17 JUDGE DICKSON: And Ms. Kwuon, I get
18 it, it's going to be more work between now and then,
19 but how more work? I mean, can you give me some --
20 I mean, is it -- is it -- tell me what we're talking
21 about here.

22 JUDGE HARZ: Its only six, it's only
23 these six.

24 MS. KWUON: So it really depends on,
25 for each particular one, again, how many ancillary

1 documents and datapoints are related to it. So I
2 can't estimate the range. Initially, when the
3 department was looking to this issue to pull the
4 1200 -- I think that was the number -- it was going
5 to take several months to be able to do that because
6 of each PDF pulled.

7 So what I might suggest maybe to
8 counsel is that if you want to give me the list of
9 six, perhaps rank them, we'll start with one, and
10 we'll try to get all six out to you by the 22nd. If
11 for some reason there's a great burden and timing-
12 related issue, we will start with one and keep you
13 posted whether or not we can get all the way to six.
14 But I would suggest --

15 JUDGE HARZ: And then maybe you can
16 get the remaining, if you can't get all six by the
17 22nd, you can get all six to them by the 27th, which
18 is the day before the deposition.

19 MS. KWUON: Why don't you rank them
20 in order.

21 JUDGE HARZ: Certainly get three to
22 them by the 22nd, and then maybe the other three by
23 the 27th to alleviate the pressure.

24 MS. KWUON: Thank you. That will
25 help. And then of course, if we can get them all

1 out at the same time, we will do that.

2 JUDGE DICKSON: And I'd like to have
3 kind of a fulsome meet and confer on this. Once you
4 get three and you've looked at them, if you don't
5 need all six to get to the deposition, alert the
6 defendants to that.

7 MR. KELLY: Certainly. We will send
8 a ranked list very shortly.

9 JUDGE HARZ: What's our next issue?

10 JUDGE DICKSON: The beloved batch
11 records.

12 JUDGE HARZ: Whoa. Oh, I have a
13 question about the batch records. Can I start with
14 a question?

15 JUDGE DICKSON: You're a judge. You
16 can do whatever you want.

17 JUDGE HARZ: A question about a
18 sentence. Okay. Can everyone turn to page 5 of the
19 joint September 9 letter. All right? I'm going to
20 the first full paragraph that begins with
21 "Identification of Biocell devices distributed in
22 the United States." The last sentence, I have a lot
23 of questions about it. Is everyone with me? I want
24 to wait. Is everyone okay? Can I see a nod?

25 COUNSEL: Yes, Your Honor.

1 JUDGE HARZ: It starts with the
2 sentence, "Nor is it feasible."

3 JUDGE DICKSON: Yes.

4 JUDGE HARZ: "Nor is it feasible, as
5 Plaintiffs contend, for Allergan to use its device
6 tracking system to identify this information as that
7 system reflects information provided by the patients
8 to Allergan regarding their implanted breast implant
9 devices, and thus does not necessarily capture every
10 patient who was implanted with a Biocell device as
11 not every plaintiff provides their device
12 information to Allergan."

13 I have a couple questions. Because
14 if it's not feasible because not every plaintiff
15 provides their device information, that's a
16 non sequitur. I mean, what you're basically saying
17 is you don't believe every patient provides that
18 information.

19 But my question is, does the
20 plaintiff provide the information or does the
21 implanting physician or the hospital, or someone
22 else provide the information? Is it really the
23 individual plaintiff?

24 MS. KWUON: The information is
25 typically contained within the medical records. So

1 when the device is ordered, and it's different
2 depending upon a large practice or a small practice
3 or a hospital, but when the devices are ordered and
4 then delivered to the hospital, once we make that
5 delivery, we don't know what exactly happens to the
6 devices as to who actually receives them.

7 So the device, the serial number for
8 that finished device is generally and supposed to be
9 included within the medical records for tracking
10 purposes, and that information is generally expected
11 to be provided back to the company for our device
12 tracking. And so that's sort of like the way you
13 would register if you purchase a blow dryer, you
14 know, so that the company can let you know if
15 there's some kind of an issue with it.

16 But that loop doesn't always happen,
17 and so that there isn't an ability for us to go find
18 and track all of that. We have to wait for that
19 information to come back to us so that then we can
20 connect those dots on our side.

21 JUDGE HARZ: But some have -- I
22 acknowledge from this sentence that you're saying
23 not every time is that information provided to you.
24 But I'm assuming, I don't know a percentage, but why
25 wouldn't that be a starting place?

1 MS. KWUON: Well, so we have the --

2 JUDGE HARZ: Device tracking system,
3 yeah.

4 MS. KWUON: Sure. So when we do get
5 the information, we have the loop on any particular
6 serial number was implanted in a particular patient,
7 so we've got that information. But that doesn't
8 take us back all the way to the batch records. So
9 the batch records, as we tried to explain in our
10 documentation, the system is intended to track the
11 devices as they're being manufactured, but not
12 intended to work backwards. So the backwards part
13 of it is more of a -- sometimes I call it reverse
14 engineering, which is you have to take the serial
15 numbers and then go trail back.

16 So one of the questions that came out
17 of the last hearing was, can we isolate batches
18 where devices actually were implanted in US patients
19 only. And so the answer to that is, no, we can't do
20 that at the batch record level. You have to take
21 all the individual serial numbers and work backwards
22 to the batches.

23 So we were trying to convey both that
24 the serial number information we have for implants
25 is incomplete, we know that to be true, and then it

1 doesn't take you to where we started, which is
2 isolate batches that were ultimately only delivered
3 to US patients only.

4 JUDGE HARZ: I think Judge Dickson
5 was reviewing some of the batch records you gave to
6 us as Exhibits 5. Judge Dickson, didn't you have
7 some questions about that?

8 JUDGE DICKSON: What I would like to
9 know is why are the batch records -- this is going
10 to sound like a really naive question, but why are
11 they so important? Because what I'm reading in the
12 batch records are basically quality assurance
13 reports. This was done, that was done, this was
14 done, that was done.

15 Now, I confess, I did not read all
16 104 pages, but I read half of it. So this question
17 is probably directed to the plaintiffs.

18 What is it that -- why do we need all
19 those? What's in there that is going to be critical
20 to your case?

21 MR. SLATER: Thank you, Your Honor.
22 It's Adam Slater, for the record.

23 To answer your question, I want to
24 step back one step before the manufacturing batch
25 records became the issue raised by the defense,

1 frankly.

2 What we asked for was the
3 manufacturing records that would show the quality
4 evaluations and the outcomes of those quality
5 evaluations, and anything that they -- we don't know
6 all the records they maintain, so we're at a bit of
7 a loss because we have to accept from them, from
8 Allergan, what they say they do.

9 But we need to be able to track: did
10 they do those activities that Your Honor just
11 referenced; did they actually check off that these
12 products met their specifications, number one; were
13 there any deviations; what was done in response to
14 that; and, more important -- or maybe not more
15 important, but just as important, we need to see
16 what they were doing because they should be doing
17 some random sampling.

18 I think they've already acknowledged
19 they take photographs, and there may even be video,
20 I'm not sure, but I believe they've said they're
21 going to be producing photographs so we're going to
22 be able to see, hopefully, whatever issues they
23 found that they documented and recorded.

24 So we're looking for the
25 manufacturing records that would let us know, what

1 did they do and what were the outcomes and what's
2 the information because, for example, there may be
3 issues that are shown by their manufacturing records
4 that weren't picked up on by Allergan or weren't
5 focused on that we and our experts look at and say,
6 this is actually really an important point of
7 departure where it shows why this got through or
8 what the problem was.

9 So we need the manufacturing records
10 for all the devices that were sold in the US because
11 we need to be able to track all of the manufacturing
12 activities and all of the manufacturing quality
13 activities.

14 Frankly, Your Honor, what you're
15 looking at sounds mundane and sounds like, well, why
16 would you need to see that people were checking
17 boxes, but if it turns out that they were checking
18 boxes and the actual finished product wasn't
19 complying, or in the reverse, boxes weren't being
20 checked so quality reviews weren't being done, that
21 would be very important information, and we need to
22 be able to confirm that up front.

23 For example, if you looked in that
24 exemplar and you saw that a bunch of boxes weren't
25 checked where they're supposed to be checking the

1 external textured surface for certain categories of
2 defects, that probably would have popped out to you
3 pretty strongly to say, wow, they didn't even look
4 at this, they didn't check it off.

5 So that's why we have to have a full
6 set of records, not a smattering, not a sampling,
7 and we need to be able to see that information.

8 I hope that responds to your
9 question.

10 MS. GEIST: Judge, can I respond
11 briefly to that?

12 JUDGE DICKSON: Sure.

13 MS. GEIST: I feel very, very
14 strongly that we need to sort of reset and refocus
15 on what plaintiffs' claims are, because Your Honor
16 said, Why do you need all this? What do you really
17 need? and the answer is, You don't need any
18 manufacturing batch records other than for the
19 plaintiffs who filed complaints because these are
20 manufacturing defect claims.

21 So for every single individual
22 plaintiff, she needs to identify in the record where
23 her device did not conform, was out of compliance
24 with the specifications for the product. That's
25 manufacturing defect 101. And those are the claims

1 in this case.

2 It is not a design defect case
3 because that would be different and that would have
4 been preempted. And I hate to say preemption,
5 because we had very long briefing and argument on
6 preemption, but the plaintiffs had to argue they are
7 not arguing design defect because that would have
8 been preempted. So their claims are manufacturing
9 defect. They need to stick to their claims. And
10 what that means is every individual plaintiff, the
11 documents that are associated with her particular
12 device are the only relevant documents with respect
13 to manufacturing.

14 JUDGE HARZ: Why is that true?

15 MS. GEIST: And in addition -- in
16 addition -- Your Honor, I just wanted to finish my
17 thought. In addition to those manufacturing-related
18 documents for each individual plaintiff, we will
19 also provide all of the CAPAs, and that's the
20 Corrective and Preventative Actions, that arise out
21 of any non-conformities identified during the
22 manufacturing process.

23 And that's sort of a, let's just say
24 a global production, that's not specific to any
25 particular plaintiff, but a medical device company

1 will have a CAPA for any time they have identified a
2 nonconformity during the manufacturing process.

3 But again, I think this is a major
4 dis --

5 JUDGE HARZ: Mr. Slater, why is what
6 Ms. Geist saying not true? Why do you need for
7 everything and not only the plaintiffs?

8 MR. SLATER: Well, to begin with,
9 Your Honor, this is not just an individual personal
10 injury litigation. There's also class actions that
11 encompass everybody that was implanted with these
12 devices in the United States. So our claims aren't
13 limited to these individual plaintiffs, number one.

14 Number two, manufacturing defect
15 cases can often rest on patterns that emerge over
16 the course of many documents across entire lots.
17 They may have evaluated one or two devices in the
18 lot that plaintiffs happened to have had the
19 implants in, but there's 12 other devices or 14
20 other devices in that lot. When you look at the
21 entirety of the records, you'll see trends and
22 you'll see patterns.

23 And frankly, the last thing that
24 counsel said about producing the CAPAs, that sounds
25 great, but those come into play when they recognize

1 the problem. There's a very good possibility that
2 they didn't recognize this problem, and it's going
3 to be up to us to take all of their documentation
4 and go through that meticulously to find the signals
5 in those records and the indications in those
6 records that these problems were recurring and they
7 were being missed.

8 I would hope that that would be the
9 case for Allergan's sake, that it would turn out
10 they didn't realize this was the problem and they
11 weren't catching it, because it's going to be much
12 more damaging to them if it turns out they knew
13 there was a problem and they were ignoring it with
14 the textured surfaces, if it turns out that that's,
15 you know, based on their records and based on all
16 the discovery that's where the problem is, and
17 that's where our case is right now, obviously.

18 So I hope that responds to your
19 question.

20 JUDGE HARZ: Okay. So the defendants
21 say, hey, class action, you're only entitled for the
22 class representative. You don't get, you know, the
23 entirety of everything that's out there. It's just
24 for the named class representative. That's what
25 they say.

1 MR. SLATER: I don't think that's
2 true because what we're looking to do is we're
3 attempting to establish class-wide claims and we are
4 representing the entire class. So, yes, there's
5 individual plaintiffs who have claims, but we have
6 the absolute right to present evidence that goes
7 beyond the individual plaintiff. I mean, I don't
8 think that the defense is suggesting if we were to
9 try the class case on the manufacturing defect
10 claims that we would be precluded from producing
11 manufacturing records for patients other than the
12 named plaintiffs.

13 I mean, you can do this class action,
14 conceivably, for -- with, let's say, for one state
15 with one plaintiff. I'm trying to simplify this.

16 JUDGE DICKSON: But we're not, but
17 we're not, and that's where I want -- I kind of want
18 to go there.

19 How many named plaintiffs do we have?
20 Not representative plaintiffs, because -- don't we
21 have -- how many complaints have been filed? I've
22 lost track.

23 MS. KWUON: We're at 1,040, so that's
24 about 900-plus in the MDL, 65 named class
25 plaintiffs, and then that puts it less than a

1 hundred in terms of any other jurisdiction. So
2 there's 65. I believe it's 65 named.

3 JUDGE DICKSON: 65 named class
4 plaintiffs, class representatives.

5 MS. KWUON: Yes, out of 1,040 total.

6 JUDGE DICKSON: And the rest are
7 individual manufacturing defect plaintiff claims.

8 MS. KWUON: Right.

9 JUDGE DICKSON: Okay. Judge Harz and
10 I have talked about this. For starters, for
11 starters, why can't we just -- and I'll get back in
12 a minute to Mr. Slater's answer about the batch
13 records, which I asked -- but for starters, why
14 can't we at least get all that information produced,
15 all that, the 1,040 produced?

16 MS. GEIST: We're not disagreeing.

17 JUDGE DICKSON: And I know you're
18 not, I know you're not, so let's at least -- I'm
19 sorry.

20 MS. GEIST: It's a lot of paper, Your
21 Honor. It's like a hundred -- I think it's a
22 hundred pages per --

23 JUDGE DICKSON: A hundred thousand, a
24 hundred thousand.

25 MS. GEIST: -- [overtalking] process,

1 it's a lot of paper. I mean, this is significant.
2 So I would suggest a sampling, you know, any type of
3 sampling the plaintiffs are really looking for with
4 the significant volume that we already agreed to
5 produce, which is squarely relevant and responsive
6 to their manufacturing defect claims.

7 JUDGE DICKSON: I get it, but what is
8 the schedule for produce -- let's say, in my case --
9 not in my case, I order that now. What's the
10 schedule? What is an appropriate, reasonable
11 schedule to get all of the batch records produced,
12 plus all of the CAPAs?

13 Now, I just want to make sure I
14 understand this. You say also you would not confine
15 the CAPAs to the plaintiffs, that would be all
16 CAPAs.

17 JUDGE HARZ: All CAPAs.

18 MS. KWUON: Right.

19 JUDGE HARZ: All CAPAs.

20 MS. GEIST: Right.

21 JUDGE DICKSON: I'll tell you what.
22 I'm not just interested in getting a lot produced
23 for no good reason. This whole issue of the class
24 and what's discoverable in class discovery, whether
25 we do merits or class discovery, I don't think we've

1 defined. We don't have a schedule. We haven't set
2 forth any parameters. And when I say "I don't
3 think," I know we haven't. So I do want to get to
4 that, and I was hoping we could start the discussion
5 today, but I don't think we can finish it today.

6 But before we get there, because
7 Judge Harz and I had a couple of discussions about
8 this, we're all in agreement that you're at least
9 going to produce all the batch records for the named
10 plaintiffs, the class representatives plus all the
11 individual plaintiffs. So what's the schedule to
12 get that done?

13 MS. KWUON: Sure. So as is in the
14 declaration of Mr. Rodriguez, who is director of
15 quality at the manufacturing facility in Costa Rica,
16 that was the -- which was included in the most
17 recent one we submitted --

18 JUDGE DICKSON: I saw it.

19 JUDGE HARZ: We have it. We have it,
20 yes.

21 MS. KWUON: And as you can see from
22 the exemplar batch records, it is, you know, lots of
23 handwritten notes and depending on time, but that
24 estimation is six hours per batch record, to go back
25 and manually pull, in many instances, from storage

1 the actual records requested here.

2 So it's estimated at six hours per.

3 If you take, let's say, 1,000 plaintiffs, that gets
4 us to 6,000 hours, 750 work days, eight hours a day,
5 you know, Monday through Friday. If it's one
6 employee full time, it could take as much as 750
7 days, which is three years. If it's two employees,
8 it's a year and a half.

9 I don't know if that actually is
10 going to hold true all the way to end, or if there's
11 going to be some increased efficiency. So my
12 suggestion might be, if we start with, let's say, I
13 don't know, 10, we will pull and time and get a
14 better idea of what it is going to take to pull each
15 one. We're going to need the finished product
16 serial number from plaintiffs or plaintiffs' medical
17 records, but we can start there. And then I think
18 once we get an a sampling or a test run, we can then
19 project out to the Court what it will take to do the
20 rest of the thousand.

21 JUDGE HARZ: Well, no, I mean, I
22 think that -- listen, I don't know what the work
23 force is like in Costa Rica, but it would seem to me
24 as though, as in other litigations, the company is
25 going to have to hire, whether it be plaintiffs or

1 defendants, very often in litigations you have to
2 hire other people to support what is needed in the
3 litigation. It would seem to me as though you would
4 need -- you'd maybe have to hire some people to do
5 this work. I mean, we can't wait two years for
6 these batch records for these named plaintiffs.

7 So I don't know how many people that
8 would be. Maybe it's 10, maybe it's 15, maybe it's
9 20. But they have to hire more people to get this
10 information to them.

11 MS. KWUON: Right. I think I was
12 just trying to give an order of magnitude, but no
13 doubt that's correct. What I'm going to suggest is
14 we start with ten or a dozen, plaintiff gives us
15 serial numbers, we have them working, clock it, and
16 then we will be able to better project what it will
17 take to finish one.

18 JUDGE HARZ: I think what Judge
19 Dickson and I are looking for is, aren't we, Judge,
20 just a date. When we -- I guess maybe we're putting
21 you on the spot and you have to talk to people and
22 you have to find out who else you're going to hire.
23 We need a date when the named individual plaintiffs,
24 whether it be in state or federal court, as well as
25 the class, when their batch records can be produced.

1 I mean, everyone agrees that has to be done, so we're
2 not even fighting over that. Now it's a question of
3 the date.

4 MS. KWUON: So we can do that, and I
5 think also the trigger point of that would be when
6 we have a serial number, so --

7 JUDGE DICKSON: I'm sorry for
8 interrupting you, Ms. Kwon. I hear you. I hear
9 you. But why -- can I suggest you meet and confer
10 with Mr. Slater or whoever Mr. Slater puts up with
11 you on this issue within -- and get us a joint
12 status letter within ten days as to -- to see -- to
13 talk about who needs to do which job and how long it
14 will take that side to do that job, and then do --
15 and then to hopefully agree. And assuming that you
16 don't agree, tell us, each, in the letter what your
17 positions are, and then Judge Harz and I will decide
18 how to cut the baby.

19 MS. KWUON: Okay.

20 JUDGE DICKSON: Great analogy, great
21 metaphor.

22 JUDGE HARZ: Okay. So I have written
23 down the number 1,040. Is that an approximate
24 number of batch records we're talking about right
25 now that we're looking for a date of production for

1 named individuals? Is that number correct, 1,040?

2 JUDGE DICKSON: That's how many
3 plaintiffs.

4 JUDGE HARZ: Are my numbers right?

5 MR. SLATER: I'm not sure if that
6 included the MCL, also, Janet. I'm not sure if you
7 included the New Jersey litigation in that count.

8 MS. KWUON: I believe it did, but we
9 can go back. That's my general understanding, but
10 we can go back and check numbers.

11 JUDGE HARZ: And I think, and I might
12 be confusing my cases, aren't there also cases --
13 are there cases in California on this one?

14 MS. KWUON: There are.

15 JUDGE HARZ: Yeah, okay. So then the
16 universe of cases. I think that's what we need to
17 know, right?

18 JUDGE DICKSON: Yes.

19 MS. KWUON: We'll factor that in.

20 MR. CARSON: Your Honor, this is
21 Shanon Carson. There are also many cases that are
22 subject to a tolling agreement between the parties,
23 so I think that needs to be factored into this
24 discussion.

25 JUDGE HARZ: How many? How many?

1 MR. CARSON: Dave, do you know the
2 exact number?

3 MR. STANLEY: Yeah, I do. Yes.

4 Good morning, everybody. David
5 Stanley from Reed Smith for defendants.

6 We have, if you count the foreign
7 claimants, we have over 6,000 tolled claimants, so
8 -- and that would complicate things significantly if
9 we were factoring those in. So I think we should
10 probably try to stick to what we have on file, at
11 least at this point.

12 JUDGE HARZ: Did you say foreign
13 claimants?

14 MR. STANLEY: Yeah, there are a
15 number of citizens of South Korea who have entered
16 into a tolling agreement. We haven't necessarily
17 agreed that if -- once the tolling agreement expires
18 that we would -- that we would allow them to come
19 into the United States to file claims without
20 objection. But at least at this point, those claims
21 are tolled.

22 If you take those out of the
23 equation, I would have to go back and check my
24 charts to see, but out of the 6- or 7,000 tolled
25 claimants, probably over half of them are from South

1 Korea.

2 JUDGE HARZ: And the country of
3 implant was?

4 MR. STANLEY: I don't understand your
5 -- you mean -- oh, no. South Korea. So these are
6 South Korean plaintiffs who were implanted in South
7 Korea.

8 JUDGE HARZ: Okay. Thank you.

9 MS. GEIST: And again, I just wanted
10 to note, the vast majority, I think, of the
11 plaintiffs who have filed and then the named
12 plaintiffs, the vast majority of plaintiffs are
13 women who have not been diagnosed with ALCL. So
14 that's a very --

15 JUDGE HARZ: Right.

16 MS. GEIST: -- rare condition, so
17 some consideration might be given to the differences
18 among the plaintiffs.

19 JUDGE HARZ: Thank you.

20 JUDGE DICKSON: In terms of the class
21 actions, are there -- I went back and I was looking
22 at Judge Martinotti's opinion, and he deals with a
23 medical monitoring class. Are there any other
24 proposed causes of action in the complaint that were
25 not brought up on motion, other than medical

1 monitoring, for a class action?

2 MR. CARSON: Yes, Your Honor. There
3 are extensive causes of actions that are pleaded in
4 the class action complaint, including causes of
5 actions for breach of warranty, and causes of action
6 for violation of state consumer protection statutes,
7 and there -- it's a complaint that, if I remember
8 correctly, is over 1200 pages, most of which is
9 causes of action individually listed for each
10 jurisdiction. And so there -- there is a lot there.

11 JUDGE DICKSON: I really -- Judge
12 Harz and I started this conversation. And Judge, I
13 apologize. The more I thought about it, the more I
14 realized how well I wanted to focus, so I haven't
15 had a chance to tell this to you to get your take on
16 it. So you can slap me back as much as you need to.

17 But before I'm going to be
18 comfortable making a final decision on what batch
19 records or any other manufacturing records that we
20 haven't even discussed, if there are any, should be
21 produced in the federal action, I need the parties
22 to do what they normally do, and that's tell me in a
23 joint discovery plan what discovery -- what's
24 relevant discovery for these causes of action,
25 because there are issues as to --

1 I mean, normally, we all know you
2 don't take discovery from putative claimants, and so
3 -- and I think Ms. Geist has made that point and I
4 agreed that is a point to be considered. But I
5 heard what Mr. Slater said today, too. But I need
6 to know how this discovery that you're seeking
7 relates to the causes of action in the class, the
8 class action cases. Not in the individual cases.
9 That's easy.

10 MR. CARSON: Your Honor --

11 JUDGE DICKSON: But in the -- but in
12 the individual cases, we've already told you you
13 have to turn over all the batch records for the
14 individuals, so that's not really an issue. I'm
15 talking about the class action.

16 MR. SLATER: I think what might be
17 getting lost, Your Honor, is that there's a
18 manufacturing defect claim obviously in the class
19 actions, which is the basis for the remedy of
20 medical monitoring for states that consider it to be
21 a remedy as opposed to a --

22 JUDGE DICKSON: Okay, okay. So
23 that's what I assume, but I need for the parties to
24 relate the discovery that would be irrelevant for
25 class discovery. And that's the other issue. We

1 haven't talked whether we're going to do class
2 discovery and merits discovery at the same time, or
3 whether we're going to do class discovery first.
4 And I know sometimes it's almost impossible to
5 separate them, or at least it's difficult. And we
6 need to talk about that, I think.

7 MR. CARSON: Your Honor --

8 JUDGE DICKSON: At least from my
9 perspective, we have to. We have to do both.

10 I'm sorry, Shanon. I didn't mean --

11 MR. CARSON: No, I was going to say I
12 completely agree, Your Honor. This wasn't teed up
13 as an issue for today's conference, but we will meet
14 and confer with defense counsel and do what exactly
15 what you're suggesting, and I think defense counsel
16 would agree with this, as well, and tee up these
17 class discovery issues for the next conference.

18 JUDGE DICKSON: Ms. Geist, you agree
19 with that, right?

20 MS. GEIST: I'm sorry, Judge. I was
21 nodding. Yes, of course, we're happy to meet and
22 confer and discuss it, and we can certainly discuss
23 it at the next conference.

24 JUDGE DICKSON: So, for this
25 conference, though, and then there's one other issue

1 Judge Harz, that you and I talked about because I
2 still don't understand why we cannot find out. I
3 understand what you're telling me, defense counsel,
4 as to why it's impossible -- not impossible -- I
5 think "feasible" was part of that sentence that was
6 contained in the paragraph where you were, I think,
7 pushing back on the idea of determining which --
8 connecting the batch records for the products that
9 were shipped into the United States.

10 And I get that from that perspective,
11 because it's all on paper and you have to reverse
12 engineer and everything, but let me try another idea
13 which I mentioned to Judge Harz.

14 Why can't you go to the Allergan
15 sales people, department, whatever we want to call
16 it? I mean, those are the ones that ultimately
17 would have sold the devices in the United States,
18 the United States Allergan sales people, assuming
19 they have a sales department for every country.
20 Even if they don't, why would not the sales
21 department have records on what they sold in the
22 United States over the last 30 years.

23 MR. SLATER: Your Honor, it's -- I
24 think it might not even -- I think sales would know,
25 obviously, but there's actually an arm of the

1 company, I would assume, that is a production arm,
2 and I'm using "production" generically, that is
3 involved in overseeing all of the shipping.

4 If they send a product anywhere, they
5 track it. They have paper or they have electronic,
6 and they know exactly every device where it went.
7 They have to know that. So they know every device
8 that went to the United States. They have to.

9 JUDGE DICKSON: Well, Mr. Slater, you
10 should understand that I want to know this because
11 I'm trying to determine whether or not we can reduce
12 the magnitude of some of the discovery. You are
13 going to continue to argue, I assume, that you want
14 everything that Costa Rica touched.

15 MR. SLATER: No, no. What we
16 actually said in the letter was this. What we want
17 is the records for the lots from which product was
18 sold into the United States. We have stepped back
19 from our position, and we thought it was a
20 significant compromise, from all of the
21 manufacturing records in the plant.

22 What we've said is we'll accept the
23 lots from which product was sold to the US, because
24 they've told you, Well, we don't know what every
25 single product, exactly, if it was in plants or not,

1 who it went to, but they know if products went from
2 Lot A to the US. If they sold three from that lot
3 to the US and 17 to France, we are asking for that
4 lot.

5 That way it makes it simpler for them
6 to identify the lots. And we've taken a big step
7 back from what our initial ask was.

8 JUDGE DICKSON: Ms. Kwuon.

9 MS. KWUON: Sure. So I guess to
10 answer the Court's question about the reverse
11 engineering, whether your --

12 JUDGE DICKSON: I agreed with it. I
13 understood it. I'm not really asking why is that
14 so. I got it. I'm saying, why can't we do what
15 Mr. Slater just said? In other words, forget Costa
16 Rica, or trying to get the information out of Costa
17 Rica.

18 MS. KWUON: So it's two-fold. One is
19 we have to start with the issue of whether or not
20 it's relevant to the case, and we start pulling
21 batch records for non-plaintiffs. We have our
22 class-related argument that we're going to address,
23 it sounds like at the next hearing, with more
24 specificity. And then we have the inordinate amount
25 of burden related to this particular kind of going

1 any broader than what we're doing here with regard
2 to the plaintiffs.

3 So just as we're going to get more
4 information to provide to the Court about how long
5 it's going to take even to do the 1,000-plus -- and
6 again, that early estimate was six hours per record
7 that we're pulling and tracing -- as it relates to
8 the batch records, the design history records, as
9 you can imagine, the records that follow start to
10 then trail off and become individual records to that
11 particular finished product.

12 So there isn't a commonality of a
13 common set of records that is going to apply all the
14 way to finished product. So it still is a very
15 manual process.

16 When we're talking about manually
17 pulling records for batches and for devices that
18 didn't even enter the United States, we are talking
19 about three quarters of the production, devices that
20 were sent out globally and not in the US, we're
21 talking about multiplying all of those things, the
22 six hours per batch record, the number of hours it's
23 going to take to pull that manual pull, the
24 exponential level that has -- and we've looked --
25 never been ordered is above and beyond what we're

1 talking about here, which are the plaintiffs that
2 are at issue.

3 So what we would like to do is what
4 the Court is suggesting, is start with a set, run
5 through the whole process, get very precise metrics
6 about time and burden. We can extrapolate from
7 there what it will take to do over a thousand
8 plaintiffs and their batch records, and then it
9 makes sense, at least to us, to then pause as we
10 address the scope of discovery relative to putative
11 class plaintiffs.

12 JUDGE DICKSON: Okay. But I'm
13 interested in getting an answer to Mr. Slater's
14 question. And maybe you're right, maybe it comes in
15 the discussion about the scope, but I think -- I
16 want to know how we can track what was brought into
17 the United States, from my perspective, which I can
18 reduce the scope for you, which Mr. Slater is
19 apparently agreeing to do. Well, I shouldn't say
20 "apparently." Which he has flat-out agreed to do.

21 MS. KWUON: From what entered the
22 United States was implanted in a US patient, the
23 tracking on that is with the serial number. So you
24 have to take --

25 JUDGE DICKSON: I think you're -- I

1 don't mean to interrupt you, but I think you're
2 narrowing it down right now to the named plaintiffs.
3 Right?

4 MS. KWUON: No, no, to all -- to all
5 implants that entered into the United States with
6 the intention. So what happens is that --

7 JUDGE DICKSON: So you're saying
8 Mr. Slater is wrong and there's not some corporate
9 department who knows what was brought into the
10 United States. Whether they were implanted or not.
11 They could be sitting on shelves. But I'm talking
12 about devices that come to the United States.

13 MS. KWUON: Okay. So they sit in a
14 distribution center, and then when there is an order
15 for a particular type and size, those breast
16 implants are then sent to that location. So the
17 distribution center does know what it is sending
18 when it receives orders.

19 It does not have information there
20 that links it back to batch records. To actually
21 link it back to batch records, you have to go down
22 to the serial number, just like we would need to get
23 from the plaintiffs, and then go backwards to find
24 the batch number.

25 So there isn't a way to take the

1 batch data of 280,000 batches and say, Oh, these are
2 the ones that have less bound devices and these are
3 only global. Instead, you have to start with that
4 serial number order in that distribution center and
5 go backwards to see what batch that belongs to.

6 JUDGE DICKSON: Okay. I understand
7 what you're saying now. So you can identify what
8 products were shipped into the United States, but
9 you will not be able to link that with a batch
10 record until we have -- I got it.

11 MR. SLATER: Your Honor, just to be
12 clear because I don't want to have misled Your
13 Honor, if I did.

14 What we're asking for -- and I see
15 where you're going, and we'll obviously abide by
16 whatever you do.

17 We're asking for the lots from which
18 the product went to the US. Not just the product
19 that went to the US, not just the records for those
20 devices, but for the full lots, because that's
21 actually easier for them to produce. If they know
22 they shipped any product from a particular lot to
23 the US, that lot would be captured and they don't
24 have to do this production they're talking about.

25 And I also will tell you, and maybe

1 what it's time for Allergan to do is start producing
2 their distribution center records and show us --
3 have some transparency on what these records look
4 like because I would be stunned if the distribution
5 center records that say these 50 devices went to the
6 US doesn't list the serial numbers and everything
7 else.

8 They have to be able to track forward
9 and back, and we're asking them to track forward
10 now. They said they can't reverse engineer, that
11 they can't do that. They don't need to do that.
12 What they need to do is know what they sent and
13 where they sent it to, and they know that, and they
14 know it in the distribution records.

15 If their records don't reflect the
16 serial numbers of what product got sent to the
17 United States someplace, then they're saying there's
18 no way to link the products that went to the US to
19 where it was manufactured. That would be
20 impossible, and the FDA would be very interested in
21 that.

22 MS. KWUON: I feel like we're
23 speaking in circles. I'm saying that the serial
24 numbers can't be identified from when they are
25 distributed. I'm just saying that having that

1 serial number doesn't take us back to being able to
2 better sort identify the batches. You have to take
3 the serial number, trace, pull these batch record
4 documents that has been provided to the Court to get
5 you back to the batch. This isn't a shortcut in
6 trying to partition or parse out the different
7 batches. That was the only part I'm trying to --

8 JUDGE DICKSON: Okay. Here's what
9 I'd like, here's what I'd like.

10 Mr. Slater, can you give me a letter
11 that outlines where you are now, and I don't mean to
12 suggest that you're changing, but I think you did
13 say you reduced your --

14 MR. SLATER: I think it's in the
15 letter we submitted, frankly, Your Honor.

16 JUDGE DICKSON: Which letter?

17 MR. SLATER: The January. It should
18 be in there. At least it was when I wrote it.

19 JUDGE HARZ: It's on page 2, the
20 second to last paragraph: "Plaintiffs offered to
21 compromise their request, without prejudice to
22 future requests, to accept the manufacturing records
23 for all lots and batches from which devices were
24 sold into the United States. Defendants rejected
25 this position out of hand."

1 It's on page 2, second to last
2 paragraph.

3 JUDGE DICKSON: Uh-huh.

4 All right. I'm sorry. Does Allergan
5 tell me in here why they are rejecting that out of
6 hand?

7 MS. KWUON: Yes. So if we go back to
8 -- so plaintiffs went from all global to --

9 JUDGE DICKSON: No. Did you tell me
10 -- did you actually respond to that in this letter?
11 Because I'm looking at the letter, but apparently
12 I'm having trouble with a brain fart trying to
13 figure out which --

14 MS. KWUON: We did on multiple
15 fronts. So the first section on class was based on
16 what is the appropriate scope of discovery. The
17 second part of it was a discussion about how the
18 exemplar batch records, the hundred pages, is
19 representative of what you're going to extrapolate
20 back to 273,000 batches.

21 JUDGE DICKSON: Right.

22 MS. KWUON: Reducing down to US might
23 reduce the piece count by tens of millions, but it
24 doesn't reduce the amount of work in tracing back to
25 the batches.

1 And then the last part of our
2 argument there had to do with what we're able to do
3 and the scope of what we're talking about with
4 regard to the 1,000-plus plaintiffs at hand here.

5 So we did address it in the letter.

6 JUDGE DICKSON: I'm going to --

7 MS. GEIST: Judge, can I just say one
8 thing? One thing.

9 JUDGE DICKSON: Yes, sure.

10 MS. GEIST: I think we did address on
11 multiple fronts, as Ms. Kwon just articulated, at a
12 rock bottom, at rock bottom we're talking about over
13 a million devices sold in the United States. So
14 that just translates. What does that translate
15 into? It's 130 million pages. So I think, at rock
16 bottom, that is our argument, why we are saying no,
17 because it is wildly overbroad, it is not relevant,
18 and we have already agreed to turn over the
19 manufacturing batch records for over 1,000
20 plaintiffs, which will be at least 6,000 hours.

21 So I would just say the sheer number,
22 130 million pages, I think more than demonstrates
23 the overbreadth of this argument on behalf of
24 plaintiffs.

25 JUDGE DICKSON: All right. So Judge

1 Harz and I will continue to discuss it, unless she's
2 ready to rule right now.

3 JUDGE HARZ: We will discuss. We
4 will discuss.

5 JUDGE DICKSON: So let's move on to
6 the organization tables.

7 JUDGE HARZ: When are the CAPAs going
8 to be produced?

9 MS. KWUON: Those will be produced, I
10 would say, by like the second week of October.

11 JUDGE HARZ: Let's give it a date.

12 MS. KWUON: Let me look at my
13 calendar.

14 JUDGE HARZ: October 15th?

15 MS. KWUON: October 15th. Thank you.

16 MS. GEIST: Your Honor, I have the
17 organizational information.

18 JUDGE DICKSON: Okay.

19 MS. GEIST: I did want to note, Your
20 Honor, I had designated 90 minutes or an hour and a
21 half for our conference, which I think is what we
22 had agreed upon, and with apologies, I have a hard
23 stop right before 1:00.

24 JUDGE DICKSON: That's all right.
25 Let's see if we can chainsaw this.

1 MS. GEIST: Your Honor, I can state
2 very briefly, and I'm sure plaintiffs will respond.
3 Very briefly, we've provided quite a bit of
4 organizational information by the company. I think
5 Your Honor stated earlier, let's get to the merits
6 discovery. This is not merits discovery. This is
7 organizational information. We have provided quite
8 a bit in two separate letters to the plaintiffs,
9 which we referred to and included in the index.

10 I'm not sure what the focus is. We
11 have -- as a reminder to the Court and to the
12 parties, there was a stipulation put in place in
13 this litigation as to the proper parties, the proper
14 named defendants, so a lot of this focused on
15 corporate organization and structure seems to be a
16 little far along from the real issues.

17 We have provided and we will continue
18 to provide any organizational charts that the
19 company has and maintains. We have communicated to
20 plaintiffs that historically Allergan and its
21 predecessors did not and were not required to keep
22 organizational charts. There is not a central
23 location or a database for organizational charts.

24 I counted in preparation for today's
25 conference at least 119 organizational charts that

1 we produced for Allergan, for McGhan and Inamed, the
2 predecessor companies, and that this organizational
3 information covered many, many different
4 departments, including regulatory, marketing,
5 medical, safety, quality assurance.

6 So we have produced what we have. We
7 will continue to produce or give custodial files if
8 we find any other organizational charts. But our
9 position is there shouldn't be -- we shouldn't need
10 to do anymore. We can only produce what we have.

11 And I harken back to our last
12 argument about, you know, plaintiffs' request that
13 we put together charts of information. There's no
14 obligation to do that, similar with the
15 organizational charts. We have produced quite a bit
16 and we have complied with our obligations.

17 So that's our position.

18 JUDGE DICKSON: Let's hear from
19 plaintiff.

20 MR. SLATER: I will cut to the chase.

21 We're going to -- we would like to
22 send a 30(b)(6) notice, take a deposition of
23 corporate representatives. I'm sure the Court is
24 weary, as we are, with lawyer letters going back and
25 forth with bits and pieces of the story being put

1 together. I'm sure the Court has never seen such
2 difficulty in understanding the organization of a
3 defendant or defendants.

4 So we would like to end the
5 letter-writing campaign. We would like to depose a
6 30(b)(6) witness and put this issue to bed because,
7 from our perspective, we need this to have the
8 context, to understand the documents, to understand
9 who is who, to understand who matters, to know what
10 things mean, to understand which companies were
11 doing what, what departments did what. Then we can,
12 when we go into the regular depositions of actual
13 fact custodians, we're not going to have to waste
14 deposition time asking organizational questions.

15 So that's what we ask for, Your
16 Honor. We would just like to move to the deposition
17 and put this issue behind us.

18 MS. GEIST: And we strongly disagree,
19 probably not surprisingly. I do think that's
20 backwards. I don't think I've ever been involved in
21 a litigation of this type where you had to give a
22 30(b)(6) up front on corporate organization. At a
23 minimum, it comes to the defense via interrogatory.
24 I'm very familiar with that. That might be an
25 appropriate vehicle.

1 But as the documents are produced,
2 typically, it becomes very clear when you look at
3 the documents. Which, again, there's 115
4 organizational charts in our production already.
5 There's a lot of information there. But as the
6 documents continue to be produced, it becomes very
7 clear, you know, who are the critical people
8 involved in the decision-making, what were their
9 roles over various time periods. It's all very
10 evident from the documents. And then plaintiffs can
11 ask their questions at the appropriate merit
12 deposition.

13 I don't know how we would possibly
14 put up a 30(b)(6) witness on all of these topics for
15 the last, you know, however number of years we're
16 talking about. It would seem to be virtually
17 impossible. And again, Your Honor, I'm not aware of
18 anybody having to do this, and if this information
19 cannot be gleaned from what we've already provided,
20 I think the appropriate vehicle would be
21 interrogatories.

22 I think we had talked about
23 interrogatories at our last conference or our
24 conference in July when a similar type information
25 was being requested. I think the default is always

1 "We're going to take a deposition," and why don't we
2 really get to the merits and stop, you know, with
3 the sideshow of a 30(b)(6) deposition every time we
4 have a dispute.

5 MS. LENZE: Your Honor, so, if I may,
6 one of the reasons -- well, let me start with this.
7 To use a phrase that has been proffered by Ms. Kwon
8 earlier today, the information we have requires us
9 to reverse engineer to find who the players are.

10 And the Court, Your Honors, have
11 already ordered in CMO 2 the defendants to provide
12 information about the departments and the divisions
13 for all defendants, and there are major gaps in what
14 they've produced.

15 For example, the information they
16 have produced in their, I believe it was, July 20th
17 letter only provided information from 2020 with
18 respect to the Allergan defendants. With respect to
19 McGhan, it was only for one year; I believe '99.
20 With respect to Inamed, maybe 2002, 2003, to 2004.
21 But there are major holes in even the structure to
22 begin with.

23 And then their production of
24 organizational charts is similarly as lacking. We
25 are given one year of maybe global medical, for

1 example. Then maybe that's from 2010. We've also
2 seen maybe something from 2012 of one department,
3 but we don't even know where to plug that department
4 in because we have no original chart from that year
5 to understand the structure.

6 And the documents that they've
7 provided, including the 38 custodial names,
8 similarly leave us with kind of these gaps and
9 questions. There's only seven individuals on that
10 list of the 38 that were a part of the companies
11 prior to 2006, and 2006 was when Allergan got
12 involved. But McGhan has existed, you know, back
13 from 1974.

14 And so, you know, we request this
15 information really about who was in charge of these
16 departments, what were the departments like in any
17 given year, and who ran these departments. Even in
18 the 38 custodial names, we're given lots of
19 directors, we're given lots of -- we have no
20 understanding of who to go to or who to put up,
21 even, as our potential custodians because we don't
22 know what the structure is, we don't know the names.
23 And obviously, it goes to what they knew and when
24 they knew it.

25 Obviously, one of the points that

1 Allergan makes in their letter and was just made
2 here is that, you know, this information about
3 predecessors is tangential, but this information,
4 plaintiffs' position is that this information is
5 really critical. The first presence of ALCL in the
6 literature was even back in the '90s.

7 So what the company was doing back in
8 the '90s and who was responsible for doing it is
9 really at the core of our case, and so we are, at
10 our most basic, requesting a years chart, really, of
11 what the structure looked like for any one of the
12 given companies and who was at the head of those
13 divisions.

14 JUDGE HARZ: I think -- Judge
15 Dickson?

16 JUDGE DICKSON: No, go ahead.

17 JUDGE HARZ: I think we should have a
18 deposition. The questions is, I'm not sure one
19 person can provide the information that is being
20 requested. I understand what is being requested. I
21 also agree it's not a tangential issue. I circled
22 that in the letter that it's not tangential.

23 So I think what would be best --
24 actually, it's kind of already been done, but I
25 don't know if the plaintiffs want to write a letter

1 indicating the information they want. I mean, I
2 hear names. McGhan, Inamed. I hear time frames.
3 If you want to write a letter saying that you want a
4 person with best knowledge to provide information
5 regarding X, Y, and Z from such companies from this
6 period of time to such period of time, because then
7 defense counsel may want to produce two or three
8 different individuals to respond to the scope of
9 that deposition focus.

10 MR. SLATER: Your Honor, we can even
11 -- that's a great idea. I think we can even go one
12 better to try to save a step. If we get a week, we
13 can serve the dep notice within a week. That way it
14 will be spelled out exactly what we're looking for.
15 And we can even copy the Court if you want when we
16 submit it to the defense so you can --

17 JUDGE HARZ: Yes. Copy the Court, as
18 well. In terms of scheduling the dep, I mean, once
19 you serve the notice, I think defense counsel will
20 have to determine who can respond to what. It may
21 be two people, it may be four people. I don't know.

22 But I agree, I'm kind of done with
23 this whole issue, and I think we -- plaintiffs
24 wanted to do the dep to begin with. I said no. We
25 were working -- and Judge Dickson said no. Now it's

1 just do that.

2 MS. GEIST: Your Honor, my only --
3 again, I don't mean to reargue again and again. My
4 only, I guess, request or at least for
5 consideration, is why are interrogatories not the
6 appropriate vehicle for this type of --

7 JUDGE HARZ: We're not going to get
8 the information unless someone is deposed with the
9 knowledge. Interrogatories is more writing. We're
10 done. We're done with -- we have to move forward.
11 Do the deposition. Let an individual answer who did
12 what when and who was in charge when, because the
13 plaintiffs need this so that they can move forward
14 to know what custodial records they need. We all
15 know this. We have to move this case. Okay?
16 That's why. Interrogatories aren't going to give
17 anything more than all the other papers. They want
18 to move to questions.

19 JUDGE DICKSON: So, Ms. Lenze, or
20 Mr. Slater, or both of you, the dep notice, and not
21 just to reiterate it, has to specifically go for
22 those gaps.

23 MR. SLATER: They will.

24 MS. GEIST: Do we have a time? I
25 mean, you know what, Your Honors, what I would

1 suggest is we will see the deposition notice, I
2 suspect we will have some objections to scope and
3 time period.

4 JUDGE DICKSON: Well, we'll do it the
5 old-fashioned way. You will respond to the dep
6 notice and if you don't meet and confer to work it
7 out, then you'll write a letter and I'll --

8 JUDGE HARZ: Yeah.

9 JUDGE DICKSON: Or Judge Harz will.

10 JUDGE HARZ: Yeah. Why would there
11 be objections as to who would have knowledge as to
12 organizational information of the company?

13 JUDGE DICKSON: I think Ms. Geist was
14 talking about how far back they want to go, and to
15 what department they might want to.

16 I'm sorry. Ms. Geist, why don't you
17 explain.

18 MS. GEIST: No, that was exactly --
19 that was my thinking exactly. Depending on the
20 departments we're talking about and --

21 JUDGE HARZ: Okay. Mr. Slater, how
22 far back is the deposition notice going to go?

23 MR. SLATER: I think it's probably
24 going to go back quite a ways in terms of the
25 corporate relationships and identifying the people

1 in the departments that would make -- be the most
2 significant to the issues in the case, and we're
3 going to try to figure that out. And we're happy,
4 once we serve the deposition notice, for the defense
5 to say, Hey, you know, this is what you really need,
6 and that is what you really need, and they can help
7 us with some vocabulary.

8 Some of these companies go back to
9 the '80s, but we're obviously not going to ask for
10 the name of every person that was in a certain
11 department in 1988, because that's going to be hard
12 to get. We're going to figure out which are the
13 most salient features of the organizations that we
14 need, and as we move forward, we will probably need
15 more granular information. And I think that these
16 questions from Your Honor and Judge Dickson help us
17 to know that we do need to focus and to make sure
18 what we're asking for in this deposition that we can
19 defend it.

20 MS. GEIST: That sounds fine.
21 Keeping in mind the date of the label change,
22 keeping in mind when this new disease sort of came
23 into --

24 JUDGE HARZ: Oh, speaking of the
25 label change, what are we going to do with regard to

1 providing information as to when certain things --
2 like particular dates. Remember, there was a whole
3 issue. Plaintiffs wanted to know specific dates
4 for --

5 MR. SLATER: For approval and in use
6 dates.

7 JUDGE HARZ: Thank you.

8 What are we doing with that?

9 MS. GEIST: We had a very lengthy
10 discussion about that, Your Honor, in July, and I
11 don't think we had a resolution. I know Your Honor
12 said many times, forget about the charts, because I
13 highlighted it in the transcript, forget about the
14 charts.

15 JUDGE HARZ: Just give the
16 information, yeah.

17 MS. GEIST: Out opposition was, you
18 know, we're not creating charts since we're --

19 JUDGE HARZ: Well, everyone is going
20 to need to know that. You need to know that, the
21 Court needs to know that, plaintiffs need to know
22 that. So I just don't want to leave that hanging
23 because it's something that is going to come up
24 again.

25 So are you meeting and conferring

1 about this? What are we doing with the issue?

2 MR. SLATER: Your Honor, frankly, I
3 think that we are at the point where we are -- and
4 I'm almost embarrassed to have to say this because
5 I've never had such issues on such foundational
6 basic things.

7 I don't know why, for example,
8 defense counsel doesn't want to provide a chart.
9 Whether they provide it in a list, on an abacus, I
10 would think that they would want an organized
11 document so everybody can refer to it when we get to
12 trial, and say, Everybody, we gave you this
13 information, you know when these things were in use,
14 so don't tell us you don't know.

15 So I would like to -- whether it's a
16 chart or a list, they don't want to give it to us at
17 all, just like they don't want to give us
18 organization information.

19 So I'm embarrassed to say we have to
20 depose a witness, and as the deposition goes on, put
21 each document in front of the witness, and say, When
22 was this approved? When was it in use? and then
23 write it down and fill our own chart out and hand it
24 to the witness at the end of the deposition, and
25 say, That's what you told us, correct? Now we have

1 our chart, because it's the only other way to go at
2 this point. And I can tell you, if there's -- I
3 don't think there's any question in Your Honor's
4 mind about how important this information is. I
5 mean, it's clear --

6 JUDGE HARZ: Everyone needs this
7 information. Okay. So I'm just asking, let me ask
8 defense, what is your plan with regard to responding
9 to this request, the approval and in use dates?

10 MS. GEIST: So I think Mr. Slater and
11 I should talk about it. I am only aware of having
12 to do this once before, and that was pretrial, so it
13 was late in the game, when the discovery was done
14 and the parties were deciding what evidence they
15 wanted to use at trial.

16 JUDGE HARZ: How would you do the
17 depositions --

18 MS. GEIST: They were done, they were
19 done, Judge, because usually a revision date at the
20 bottom of communication pieces with physicians, and
21 directly to women, you know, patient-focused
22 communications.

23 JUDGE HARZ: Like, for example, if
24 you don't know when a particular brochure was used,
25 if you don't know when particular marketing material

1 was used, how do you ask questions about it at a
2 deposition?

3 MR. SLATER: You don't, Judge. What
4 you do is you guess. And I can tell you in the MCL
5 in front of you with Ethicon, all of this was done.
6 We got all the charts. Riker Danzig produced them
7 all. And it made that litigation, as Your Honor
8 knows, seamless on this issue. There was never a
9 question. We know when everything was in use and we
10 don't ever have to come back and argue, and we don't
11 have questions, we don't have open ended --

12 JUDGE HARZ: How can they give it to
13 you? Who would you depose to get the information?

14 MR. SLATER: I guess they'll have to
15 put up a witness or witnesses, and they'll have to
16 go through this -- we'll have to do somebody on the
17 DFUs, somebody on the patient brochures, someone on
18 the sales and marketing, and someone on the
19 professional education. That's probably the way it
20 will have to happen because they don't want to just
21 cooperate and give us the information.

22 MS. GEIST: It's not a question of
23 cooperation. First of all, you're asking us to
24 create work product. We're not obligated to do
25 that. Second, in the DFUs, like the IFUs, there

1 typically is an effective or revision date. We have
2 found it to be very, very close to impossible to
3 give any, you know, this was the beginning date and
4 this was the end date when this communication piece
5 was out. And we discussed that complexity and
6 challenge before, you and I, Adam.

7 MR. SLATER: Right. And I would say,
8 Melissa, when we did this with Bard, you gave us --
9 you gave me, when I asked for this, when I became
10 liaison counsel for the Bard litigation in Bergen
11 County, you got the DFU dates, I believe the patient
12 brochure dates. You -- I think you got me marketing
13 dates. And on professional education, Bard said,
14 "We don't know," and that was it. They didn't know.
15 And then we knew that those can't be used against us
16 by Bard where they would come in and say, Well, this
17 was used with this doctor, now here's the date. So
18 at least everyone was on a level playing field.

19 MS. GEIST: Right, which was very,
20 very late. It was very, very late in that
21 litigation, pretrial. So why don't we --

22 MR. SLATER: No, it was actually --
23 well, I don't want to argue with you. Let's --

24 MS. GEIST: Hold on. We have an
25 order from Judge Dickson relating to the marketing

1 and communication pieces. Why don't we get that
2 pushed out and get that produced to plaintiffs, and
3 then we can meet and confer on what that looks like.

4 MR. SLATER: Well, what this is going
5 to do is it just pushes the ball so far down the
6 road.

7 For example, when the documents come
8 in to us and we start seeing emails -- make up a
9 date -- January 1st, 2004, and someone says to
10 someone, you know, we have a problem with XYZ. We
11 then need to be able to look at what were they
12 telling doctors immediately after that, what were
13 they saying in their marketing, what were they
14 saying in the DFU. We need to be able to match up
15 and triangulate internal documents with what they
16 were saying to the world.

17 And that's one of the -- not just --
18 so we don't need just this information for the
19 implanting doctors and learned intermediaries who
20 were critical; we also have to be able to know the
21 story. What were they saying to the world and what
22 did they know internally, and the only way to know
23 that is by knowing the in use dates.

24 I find it hard to imagine the company
25 doesn't know when things went into use because

1 that's something that is tracked very carefully by
2 the marketing and sales people.

3 MS. GEIST: No, it's typically not.

4 MR. SLATER: If they don't know, they
5 don't know.

6 MS. GEIST: But I am going to
7 apologize again. I have to run a meeting at 1 p.m.
8 We are way over our time. Maybe we need to --

9 JUDGE HARZ: I want to revisit this
10 approval and in use dates, because if you can't
11 agree, we'll just schedule a depositions around it.
12 Okay? But you talk, you figure out what you want to
13 do, and we can --

14 When is our next meeting, Judge
15 Dickson?

16 JUDGE DICKSON: I don't think we have
17 one scheduled.

18 JUDGE HARZ: Okay. And are we going
19 to send out an order regarding these particular
20 dates what we agreed to today for all counsel?

21 JUDGE DICKSON: Oh, yeah.

22 JUDGE HARZ: Okay. And when would
23 you like to meet again, so we can let Ms. Geist go.

24 MR. SLATER: Your Honor, I was going
25 to suggest that maybe we start to schedule the

1 hearings if a little shorter time frames and start
2 to do this more often, just because then the issues
3 will be fresh and we can get closure on the issues
4 in a little bit more of a shorter turnaround, if
5 that's okay with --

6 JUDGE HARZ: Okay. So today is
7 September -- what's today?

8 MR. KELLY: 14th.

9 JUDGE HARZ: 14th. Just not the
10 first week in October, please.

11 MS. GEIST: We have October 19
12 scheduled for the next conference.

13 MR. SLATER: What about September 30,
14 Your Honor?

15 JUDGE DICKSON: I can do September
16 30th.

17 JUDGE HARZ: I can do September 30.

18 MS. KWUON: I'm traveling on the
19 30th.

20 JUDGE HARZ: Who is that? I'm sorry.

21 MS. KWUON: It's Janet Kwuon for
22 Allergan. I'm traveling on the 30th.

23 MR. SLATER: We would be very
24 concerned about pushing it beyond that, so --

25 JUDGE HARZ: October 1st?

1 MR. SLATER: That's fine with me.

2 MS. GEIST: I can't do it on October
3 1st. I'm sorry.

4 JUDGE HARZ: Wednesday, the 29th? I
5 have another big thing in the morning. I could do
6 it after 1:00.

7 MR. SLATER: That's fine.

8 MS. KWUON: I'm sorry. The 29th and
9 30th are both travel days for me.

10 JUDGE HARZ: Okay. How about the
11 28th?

12 MR. KELLY: I have a deposition that
13 day, Your Honor.

14 MS. GEIST: Can we do it after the
15 deposition, Judge? What about that first week in
16 October.

17 JUDGE HARZ: The first week in
18 October, I'm away.

19 MR. SLATER: Can we just do it on the
20 30th? I understand Janet is going to be traveling,
21 but some of these issues we just need to be able to
22 get closure from the perspective of everybody, I
23 would think. I'm just concerned about pushing it
24 beyond that week.

25 MS. GEIST: I think you realize that

1 Janet is our main contact person on all things
2 discovery.

3 MS. KWUON: Sorry for everybody else.

4 MR. KELLY: Have we proposed the 27th
5 yet?

6 MR. SLATER: That's fine.

7 MR. KELLY: I realize it's less than
8 two weeks, but it's better than waiting a month.

9 JUDGE HARZ: I'm okay the 27th.

10 JUDGE DICKSON: I'm good.

11 JUDGE HARZ: Okay. What time?

12 MS. KWUON: Can we do it again at
13 11:00 Eastern?

14 JUDGE HARZ: 11:00 Eastern.

15 JUDGE DICKSON: Okay.

16 MS. LENZE: Your Honors, we just have
17 one other issue on the agenda today, and
18 understanding Allergan's response from September
19 10th indicated with respect to the RFPs --

20 MR. SLATER: Jen, can I just
21 interrupt you one second.

22 MS. LENZE: Yeah, sure.

23 MR. SLATER: I apologize. I have a
24 deposition of an expert to take in four minutes.
25 Can I be excused?

1 JUDGE DICKSON: Ms. Geist has to go.

2 Ms. Geist, can you make somebody else
3 the host?

4 MS. GEIST: I don't know, Judge. If
5 I hit end, I don't know.

6 MS. LENZE: And all I was going to
7 ask was just for a date certain that Allergan
8 supplements, that's it, in 30 seconds.

9 MS. KWUON: I can't give you a date
10 like on the spot, but I'll get back to you today.

11 MS. LENZE: Okay.

12 MS. KWUON: I think then we're done.

13 JUDGE HARZ: Thank you, everybody.
14 Okay. Bye.

15 - - -

16 (Conference adjourned at 12:57 p.m.)

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EXHIBIT B

1 UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
2 CASE NO. 2:19-MD-02921 (BRM)(ESK)
3 - - -
4
5 IN RE: ALLERGAN BIOCELL TEXTURED :
BREAST IMPLANT PRODUCTS LIABILITY :
6 LITIGATION :
: MDL NO. 2921
7 ----- :
:
8 This Document Relates To: : CONFIDENTIAL
All Cases :
9
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SEPTEMBER 28, 2021
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13 TRANSCRIPT of the videotaped
14 30(b)(6) deposition testimony of ROGER A. HUFF, held
15 remotely via Zoom on the above-referenced date and
16 commencing at 9:01 a.m. PST, as stenographically
17 reported by Constance E. Perks, CRR, CCR, CRC, RSA,
18 a Federally-Approved Certified Realtime Reporter and
19 Notary Public, NJ CCR License #300XI0142900.
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24 GOLKOW LITIGATION TECHNOLOGIES, LLC
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1 relevant ESI sources.

2 BY MR. KELLY:

3 Q. And I'm going to list them and
4 make sure that you understand that you're here
5 to speak about them today.

6 Does that make sense, Mr. Huff?

7 MS. KWUON: Can I ask to see the
8 document all the way through, and then
9 the date on it?

10 MR. KELLY: Sure.

11 And it keeps going into the --
12 there's an attachment of the original
13 30(b)(6) notice.

14 MS. KWUON: And can we go off
15 the record for just a second?

16 MR. KELLY: We have a pending
17 question, actually.

18 MS. KWUON: Oh. What's the
19 pending question? Sorry.

20 BY MR. KELLY:

21 Q. Do you understand that you
22 are -- I can phrase it again. Sorry.

23 I'm going to list the four
24 potentially relevant ESI sources that are
25 within the scope of your deposition. Those

1 are Box, voicemail, SharePoint, and Skype.

2 Is that your understanding of
3 the scope of this deposition?

4 A. Yes.

5 Q. Thank you.

6 MS. KWUON: Okay. Thanks, Max.

7 And can we go off the record for
8 a second?

9 MR. KELLY: Sure.

10 THE VIDEOGRAPHER: The time is
11 9:18. We are off the record.

12 (A recess was taken.)

13 THE VIDEOGRAPHER: The time is
14 9:22. We are back on the record.

15 BY MR. KELLY:

16 Q. So just before the break, we
17 clarified that the four data sources at issue
18 in this deposition are Box, SharePoint,
19 voicemail, and Skype. Is that right?

20 A. That's correct.

21 Q. And you have been designated
22 today as a corporate representative to give
23 testimony on behalf of the company.

24 Do you know what that means?

25 A. I believe so.

1 privileged information.

2 But you can answer beyond that.

3 THE WITNESS: No.

4 BY MR. KELLY:

5 Q. So you -- you don't know what
6 steps, if any, Allergan took to preserve
7 documents relevant to this litigation?

8 A. That's correct. I do not.

9 Q. Okay. Are you aware of the
10 settings or policies with regard to any of the
11 four data sources we're here to talk about
12 today - that's Box, SharePoint, voicemail, and
13 Skype - are you aware of policies or settings
14 changing for any of those four sources in
15 connection with the litigation hold?

16 MS. KWUON: Objection as to
17 form; compound, vague and ambiguous,
18 lacks foundation.

19 But you can answer the question.

20 THE WITNESS: If you could help
21 me with understanding the two parts.
22 Am I aware of policies, or am I aware
23 of settings being changed?

24 BY MR. KELLY:

25 Q. Its only the latter. Let

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 CASE NO. 2:19-MD-02921 (BRM)(ESK)

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5 IN RE: ALLERGAN BIOCELL TEXTURED :
BREAST IMPLANT PRODUCTS LIABILITY :
6 LITIGATION :
: MDL NO. 2921

7

8 This Document Relates To: : CONFIDENTIAL
All Cases :

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SEPTEMBER 28, 2021

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13 TRANSCRIPT of the videotaped
14 30(b)(6) deposition testimony of VICTOR HUYNH, held
15 remotely via Zoom on the above-referenced date and
16 commencing at 1:08 p.m. PST, as stenographically
17 reported by Constance E. Perks, CRR, CCR, CRC, RSA,
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1 that adverse incident reports,
2 investigation, or reporting.

3 So you have our designation of
4 what the witness is going to cover.

5 MR. BUCHANAN: Yeah, and I
6 thought it was co-extensive with topic
7 1 and subcategory of b. Is there
8 something you're carving out there,
9 because I believe we're limited on
10 technical topics here.

11 MR. COHEN: Yeah, so it
12 certainly -- it -- what he's going to
13 testify to is certainly part of what's
14 in 1.b., but he is testifying with
15 regard to a particular database, and
16 that's not to say that's the only
17 document out there that has to do with
18 adverse incidents, investigations, or
19 reporting.

20 But reporting in that particular
21 database is what he's designated for.

22 MR. BUCHANAN: Fair enough. So
23 you're scoping -- just so we're on the
24 same page, you're scoping and limiting
25 him specifically to TrackWise,

1 correct?

2 MR. COHEN: Correct.

3 MR. BUCHANAN: Okay. But no
4 other concern with regard to the
5 topics and the introductory paragraph
6 of 1?

7 MR. COHEN: No other objection.

8 MR. BUCHANAN: That's fine.

9 Thank you.

10 BY MR. BUCHANAN:

11 Q. Moving on to 2, sir: "The
12 Allergan Defendants' information files,
13 including currently maintained computer files,
14 as well as historical, archival, back-up, and
15 legacy computer files, whether in current or
16 historic media or formats, such as digital
17 evidence that may be used to support claims or
18 defenses."

19 Do you see that, sir?

20 A. I do, yeah.

21 Q. Are you prepared to testify with
22 regard to that topic as it relates to
23 TrackWise?

24 MR. COHEN: I'm going to --

25 THE WITNESS: I --